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Trade and Development Board
Trade and Development Commission
Intergovernmental Group of Experts on Competition Law and Policy
Fourteenth session
Geneva, 8–10 July 2014
Item 2 of the provisional agenda
Adoption of the agenda and organization of work

Provisional agenda and annotations

I. Provisional agenda

1. Election of officers
2. Adoption of the agenda and organization of work
3. (a) Consultations and discussions regarding peer reviews on competition law and policy, review of the Model Law on Competition and studies related to the provisions of the Set of Principles and Rules

   (b) Work programme, including capacity-building and technical assistance on competition law and policy
4. Provisional agenda for the Seventh Review Conference
5. Adoption of the report of the Intergovernmental Group of Experts on Competition Law and Policy

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II. Annotations

Item 1
Election of officers

1. The Intergovernmental Group of Experts will elect a Chair and a Vice-Chair-cum-Rapporteur.

Item 2
Adoption of the agenda and organization of work

2. The Intergovernmental Group of Experts may wish to adopt the provisional agenda contained in chapter I above.

3. It is proposed that the first plenary meeting, which will start at 10 a.m. on Tuesday, 8 July 2014, should be devoted to procedural matters (items 1 and 2 of the provisional agenda) and introductory statements. The closing plenary meeting on Thursday, 10 July 2014, will be devoted to the adoption of the report and the provisional agenda of the Seventh Review Conference (item 4 of the provisional agenda). In view of the short duration of the session, the Vice-Chair-cum-Rapporteur will be authorized to complete the final report after closure of the session.

4. The remaining meetings, from 8 July (after the election of officers and the general statements) to the morning of 10 July, can then be devoted to substantive items 3 (a) and 3 (b) of the provisional agenda. If necessary, the adoption of the report may be postponed until the late afternoon of 10 July in order to allow for an informal working session to be held that afternoon.

Item 3 (a)
Consultations and discussions regarding peer reviews on competition law and policy, review of the Model Law on Competition and studies related to the provisions of the Set of Principles and Rules

5. In accordance with paragraph 7 of the agreed conclusions adopted by the Intergovernmental Group of Experts at its thirteenth session (see TD/B/C.I/CLP/25), the Group will consider the following issues at this session:

(a) The benefit of competition policy for consumers;

(b) Communication strategies of competition authorities as a tool for agency effectiveness;

(c) Informal cooperation among competition agencies in specific cases;

(d) Voluntary peer reviews on the competition law and policy of interested countries.

6. To facilitate the round-table discussion on the first three topics and the peer reviews, the secretariat has prepared three reports entitled "The benefit of competition policy for consumers" (TD/B/C.I/CLP/27), "Communication strategies of competition authorities as a tool for agency effectiveness" (TD/B/C.I/CLP/28) and "Informal cooperation among competition agencies in specific cases" (TD/B/C.I/CLP/29).

7. Also, in paragraph 7 of the above-mentioned agreed conclusions, the Intergovernmental Group of Experts decided that UNCTAD should undertake further voluntary peer reviews of the competition law and policy of a member State or regional groupings of States during the fourteenth session of the Intergovernmental Group of Experts. Accordingly, at its fourteenth session, the group will conduct voluntary peer reviews of the competition law and policy of Namibia, the Philippines and Seychelles. The full peer review reports of Namibia (UNCTAD/DITC/CLP/2014/3), the Philippines (UNCTAD/DITC/CLP/2014/2) and Seychelles (UNCTAD/DITC/CLP/2014/1) will be available in English only. To facilitate discussion of these reports, an overview for each report will be made available in all languages (TD/B/C.I/CLP/33, for Namibia; TD/B/C.I/CLP/31, for the Philippines; and TD/B/C.I/CLP/32, for Seychelles).

8. In paragraph 11 of the above-mentioned agreed conclusions, the Intergovernmental Group of Experts requested the secretariat to continue publishing as non-sessional documents and to include in its website further issues of the Handbook on Competition Legislation that contains commentaries on national competition legislation and provides the basis for further revision and updating of the Model Law. The updated version of the handbook will be submitted in the form of the Handbook on Competition Legislation: Consolidated Report 2001–2013 (UNCTAD/DITC/CLP/2014/4, CD-ROM, forthcoming). The Directory of Competition Authorities, of which the extended form is the UNCTAD Guidebook on Competition Systems, is available on the UNCTAD competition website (www.unctad.org/competition/).

9. Experts are invited to make an oral presentation supported by a short written paper on the subjects referred to above. The papers will be made available in the meeting room during the consultations. Should countries wish to hold consultations on other subjects, they are invited to inform the secretariat of the subject by no later than 15 May 2014 to enable all participants to prepare for the consultations.

Item 3 (b)
Work programme, including capacity-building and technical assistance on competition law and policy

10. Under this item, the Intergovernmental Group of Experts is expected to give guidance to the UNCTAD secretariat on further capacity-building work to be undertaken on competition law and policy. To facilitate this exercise, the Intergovernmental Group of Experts will have reviewed the secretariat reports entitled "The benefit of competition policy for consumers" (TD/B/C.I/CLP/27), "Communication strategies of competition authorities as a tool for agency effectiveness" (TD/B/C.I/CLP/28) and "Informal cooperation among competition agencies in specific cases" (TD/B/C.I/CLP/29) and will have heard presentations by experts, international and regional actors, as well as representatives of the private sectors and civil societies. The Intergovernmental Group of Experts will also have before it a report entitled "Review of capacity-building and technical assistance in the area of competition law and policy" (TD/B/C.I/CLP/30). The Intergovernmental Group of Experts is expected to identify practical ways to feed the outcomes of the discussions on the above round-table topics into capacity-building activities for interested competition agencies in developing countries and countries with economies in transition.

Item 4
Provisional agenda for the Seventh Review Conference

11. Acting in its capacity as the preparatory body for the Seventh Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, the Intergovernmental Group of Experts is expected to agree on the provisional agenda for the next session of the Conference.

12. It should be noted that the Sixth United Nations Conference to Review the Set in its resolution (see TD/RBP/CONF.7/11) decided that future sessions of the Intergovernmental Group of Experts should include at least four clusters of issues for informal consultations among participants on competition law and policy issues with a special focus on practical cases. The clusters should cover:

(a) Appropriate design and enforcement of competition law and policy;

(b) International cooperation and networking;

(c) Cost-effective complementarity and collaboration in the provision of capacity-building and technical assistance to interested countries;

(d) Consultations on the Model Law.

13. The Sixth United Nations Conference to Review the Set also decided in paragraph 8 of the resolution that the topics contained therein were to be discussed at the Intergovernmental Group of Experts, with the aim of holding an in-depth discussion and reaching consensus on best practices in these areas, which could be of use to young competition agencies.

14. In the period between the Sixth United Nations Conference to Review the Set and July 2014, two ad hoc experts meetings on the interface between competition and consumer welfare, one ad hoc expert meeting on the role of competition in fostering sustainable growth, trade and competitiveness, as well as three sessions of the Intergovernmental Group of Experts on Competition Law and Policy have taken place at UNCTAD. Thus, the Intergovernmental Group of Experts on Competition Law and Policy held round tables on the following clusters of issues:

(a) Appropriate design and enforcement of competition law and policy. The topics under this cluster were (i) competition policy and public procurement; (ii) the benefit of competition policy for consumers; (iii) the impact of cartels on the poor; (iv) the importance of coherence between competition and government policies; (v) foundations of an effective competition agency; (vi) prioritization and resource allocation as a tool for agency effectiveness; (vii) knowledge and human resource management for effective competition law enforcement; and (vii) communication strategies of competition authorities as a tool for agency effectiveness.

(b) Voluntary peer reviews. The countries reviewed were Mongolia, Namibia, Nicaragua, Pakistan, the Philippines, Serbia, Seychelles, Ukraine, the United Republic of Tanzania, Zambia and Zimbabwe. The new peer reviews initiated in 2014 are for Albania, Fiji and Papua New Guinea.

(c) International cooperation and networking. The topics under this cluster were (i) modalities and procedures for international cooperation in competition cases involving more than one country; (ii) cross-border anti-competitive practices: the challenges for developing countries and economies in transition; (iii) review of the experience gained so far in enforcement cooperation, including at the regional level; and (iv) informal cooperation among competition agencies in specific cases.

(d) Cost-effective complementarity and collaboration in the provision of capacity-building and technical assistance to interested countries. The topic under this cluster was the effectiveness of capacity-building extended to young competition agencies.

(e) Consultations on the Model Law. Consultations were held on the revised chapters III, VIII, V, IX, X, XI and XIII of the UNCTAD Model Law on Competition.

15. Delegates are reminded that the thirteenth session of the Intergovernmental Group of Experts held in July 2013 also requested the UNCTAD secretariat, with a view to facilitating consultations during the Conference, to organize round tables including on:

(a) Ways and means to strengthen competition agencies in order to better deliver competition policy enforcement and advocacy;

(b) Feedback from recently peer-reviewed countries with competition agencies on enforcement and changes since the peer reviews.

16. In light of these decisions and the work accomplished thus far by Intergovernmental Group of Experts, including the voluntary peer reviews, delegates may wish to consult on and identify new broad areas of work for consultations during the Seventh Review Conference, including possible amendments to the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

Item 5
Adoption of the report of the Intergovernmental Group of Experts on Competition Law and Policy

17. The Intergovernmental Group of Experts will adopt its report to the Trade and Development Commission.

Experts are requested to submit papers to the UNCTAD secretariat as soon as possible. For further information, please contact Mr. Graham Mott, Competition Law and Policy Branch, Division on International Trade in Goods and Services, and Commodities, UNCTAD; e-mail: graham.mott@unctad.org; tel.: +41 22 917 4573; fax+41 22 917 0247.

Annex

Draft work programme of the fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy

8–10 July 2014

Palais des Nations, E-Building, Room XVIII

Tuesday, 8 July 2014	Wednesday, 9 July 2014	Thursday, 10 July 2014
10 a.m.–1 p.m.	10 a.m.–1 p.m.	10 a.m.–1 p.m.
Opening of the meeting:	**Round table**	**Round table**
Address by the Secretary-General of UNCTAD	Informal cooperation among competition agencies in specific cases	Communication strategies of competition authorities as a tool for agency effectiveness
Round table	**Panellists**	**Panellists**
The benefit of competition policy for consumers	**Discussion**	**Discussion**
Panellists	Work programme on capacity-building activities	Preparation for the Seventh United Nations Review Conference
Discussion	UNCTAD's online databank on competition cases	
3 p.m.–6 p.m.	3 p.m.–6 p.m.	3 p.m.–6 p.m.
Voluntary Peer Reviews of Namibia and of Seychelles	Voluntary Peer Review of the Philippines	Agreed conclusions of the Intergovernmental Group of Experts
- Presentation of the country report	- Presentation of the country report	Adoption of the draft agenda for the Seventh Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (November 2015)
- Observations by the delegations	- Observations by the delegations	Adoption of the Report of the Intergovernmental Group of Experts
- Questions and answers	- Questions and answers	

Tuesday, 8 July 2014	Wednesday, 9 July 2014	Thursday, 10 July 2014
Session II:	Session II:	
Interactive session on specific issues identified in the peer review report and issues on which the country may seek clarification	Interactive session on specific issues identified in the peer review report and issues on which the country may seek clarification	

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Item 3 (a) of the provisional agenda
Consultations and discussions regarding peer reviews on competition law and policy, review of the Model Law on Competition and studies related to the provisions of the Set of Principles and Rules

The benefit of competition policy for consumers

Note by the UNCTAD secretariat

Executive summary

The ultimate goal of both competition and consumer policies is to enhance consumer well-being. Both policies are directed at ensuring that markets function effectively and at correcting market failures, but approach this goal from different perspectives. Competition policy addresses the supply side of the market and aims to ensure that consumers have adequate and affordable choices, while consumer policy tackles demand-side issues and aims to ensure that consumers can exercise their choices effectively.

This note details how competition policy, through law enforcement and advocacy, can benefit consumers and provides examples from various jurisdictions. The importance of policy coordination between competition, consumer and regulatory agencies is discussed, as well as policy coherence in ensuring benefits for consumers, including in public utilities in a post-liberalization period. The note also addresses switching costs, asymmetric information and misleading advertising and how these factors affect consumer welfare and competition. Finally, ways to enhance consumer empowerment are noted.

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Introduction

1. The ultimate goal of both competition and consumer policies is to enhance consumer well-being. Both policies are directed at ensuring that markets function effectively and at correcting market failures, but approach this goal from different perspectives. Competition policy addresses the supply side of the market and aims to ensure that consumers have adequate and affordable choices, while consumer policy tackles demand-side issues and aims to ensure that consumers can exercise their choices effectively.

2. This note details the benefits of competition policy for consumers and examines how competition and consumer policies interact with each other, highlighting the complementary natures of these policies in promoting competition and enhancing consumer welfare, and providing examples. Ways to enhance consumer benefits from competition policy are also discussed. Case studies from various States demonstrating the benefits of competition policy for consumers are provided.[1]

3. The *United Nations Guidelines for Consumer Protection*, as stated in the secretariat's note on consumer protection and competition policy, do not provide a definition of consumer.[2] While consumer protection laws generally cover natural persons in their household settings, some laws, such as those of China, India and the Philippines, extend coverage to natural persons in their roles as sole proprietors or subsistence farmers. This note focuses on a narrower definition of consumer. Consumer policies aim to improve consumers' capabilities to make well-informed decisions and to protect consumers' interests by addressing situations where there is consumer detriment and taking measures to reduce it. Consumer detriment is defined as the loss in economic welfare incurred by consumers "if they are misled into making purchases of goods and services which they would not otherwise have made or if they pay more for purchases than they would if they had been better informed".[3]

I. The benefits of competition policy for consumers

4. Competition policy aims to make markets work for consumers through its core elements: law enforcement and advocacy. Competition law enforcement deals with anti-competitive practices arising from the acquisition or exercise of undue market power by firms that result in consumer harm in the forms of higher prices, lower quality, limited choices and lack of innovation. Enforcement provides remedies to avoid situations that will lead to decreased competition in markets, such as in the case of prospective anti-competitive mergers. Effective enforcement is important not only to sanction anti-competitive conduct but also to deter future anti-competitive practices. This chapter demonstrates the benefits of competition policy for consumers through case studies from various jurisdictions on competition law enforcement and advocacy.

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[1] The case studies provided in this background note are taken either from the contributions of member States or from publicly available sources, as indicated in the respective footnotes.

[2] TD/B/C.I/EM/2.

[3] Organization for Economic Cooperation and Development (OECD), 2010, *Consumer Policy Toolkit*, 52, Paris.

A. Competition law enforcement

5. Competition law enforcement benefits consumers through detecting and sanctioning anti-competitive practices, including cartels, the abuse of market power, uncontrolled mergers and bid-rigging in public procurement.

1. Cartels

6. Cartels cause harm to consumers by fixing prices, limiting output or allocating markets. Cartels can also increase prices significantly. Connor (2014) notes that the median average long-run overcharge for all types of cartels over all time periods is 23 per cent.[4] Effective enforcement against cartels sometimes has direct visible effects in terms of reduced prices in the market, as depicted in the secretariat's note on the impact of cartels on the poor with regard to the gasoline cartel case in Brazil, where prices fell following the raid carried out in the course of the investigation.[5] Cartel investigations and fines also have a deterrent effect on uncovered and potential cartels. However, effective enforcement does not necessarily bring about an immediate fall in prices in all cases. Nevertheless, eliminating cartels contributes to increased efficiency and enhanced consumer welfare. Three case studies demonstrating the benefits of cartel prosecution for consumers are detailed below.

7. The Administrative Council for Economic Defence (CADE), the competition authority of Brazil, launched an investigation in response to a complaint by a bakery owner who had been threatened by other bakeries for selling bread at a price lower than that of his competitors. The authority imposed a total fine of R$ 650,000 for fixing the price of bread on the 18 bakeries and 19 individuals in the city of Sobradinho comprising the cartel. Consumers benefited from this investigation in terms of price and choice, as competition between bakeries was restored.[6]

8. In December 2008, the Fiscalía Nacional Económica, the competition authority of Chile, filed a complaint against three pharmacies, accusing them of concerted action that resulted in price increases for 222 prescription drugs between December 2007 and April 2008. The average increase in sales price was 48 per cent, representing a US$50 million increase in gross income for the pharmacies. In April 2009, a settlement agreement was reached with one of the pharmacies that admitted its participation in the cartel. In January 2012, the Tribunal for the Defence of Free Competition imposed a fine of US$19 million on each of the two other pharmacy chains based on the seriousness of the conduct and the extent of the harm caused, affecting a significant number of consumers in the State. Finally, in September 2012, the Supreme Court upheld the Tribunal's decision and stated that economic interest had been placed before human dignity and life and individuals' health. Following the decision, the National Consumer Service (Sernac) and consumer organizations filed civil lawsuits against the three pharmacies involved in the cartel, which are ongoing.[7] This example demonstrates the extent of financial harm to

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[4] JM Connor, 2014, Price-fixing overcharges: Revised third edition, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2400780 (accessed 22 April 2014).

[5] TD/B/C.I/CLP/24/Rev.1.

[6] Contribution from Brazil to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

[7] Contribution from Chile to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

consumers caused by cartels and shows that interventions by competition authorities can trigger further action by consumer organizations to remedy the situation.

9. The telecommunications market in Indonesia, particularly the short message service segment, has previously raised competition concerns. From 1999 to 2004, short messages could only be sent through one operator, at a standard fixed rate of Rp 350 per message. Interconnection with other operators' networks was not available. New operators entered the market between 2004 and 2007 and introduced different rates for messages sent within the same network (on-net) and messages sent to other networks (off-net). In 2007, another three new operators introduced free on-net messages and a very low rate of Rp 100 for off-net messages. Following a complaint, the Commission for the Supervision of Business Competition, the competition authority of Indonesia, found that some operators had agreed upon retail off-net tariffs in their interconnection agreements, entering into a price-fixing agreement for the period 2004–2008 according to which the off-net tariffs would not be lower than Rp 250 per message and the retail rate of the network provider. The authority condemned six operators for establishing a cartel and estimated that the consumer harm caused by the cartel amounted to Rp 2.8 trillion. As a result of the authority's intervention, off-net rates decreased significantly, up to Rp 100 to Rp 150 per message, and competition was restored to the market. Operators began to introduce new products and strategies beneficial to consumers. A study conducted by the authority in 2010 demonstrated that the decision had increased consumer welfare for the period 2007–2009 by an estimated Rp 1.96 trillion (0.0009 per cent of Indonesia's real gross domestic product in 2009).[8]

2. Abuses of market power

10. In highly concentrated markets, dominant firms may abuse their market power by excluding competitors or exploiting consumers through refusals to supply, tying and/or bundling, capacity dumping and predatory or excessive pricing. The following case study shows the impact on consumers of an enforcement action against an abuse of dominance.

11. In 2010, the Competition Commission of Mauritius investigated an abuse of monopoly power by a manufacturing company in the block processed cheddar cheese market and the company was found to have violated the Competition Act 2007 by offering retroactive rebates on a specific brand of block processed cheddar cheese in exchange for premium shelf space for its products. The Commission conducted an impact assessment of its intervention and found that its decision had facilitated the entry of two new brands, increasing competition in this market and resulting in a near 14 per cent price decrease for cheddar cheese in almost all Mauritius supermarkets. The Commission also estimated the consumer surplus increase and concluded that consumer savings ranged between MUR 8 million and MUR 39 million in the post-intervention period from May to August 2011.[9]

12. A further example is noted in an impact assessment carried out to measure consumer benefits from competition in the retail industry in Japan, which demonstrated that the removal of entry restrictions for large-scale retail stores benefited consumers in terms of

[8] University of Indonesia, Faculty of Economics, Institute for Economic and Social Research, 2011, Estimating the impact of competition in text message service to consumer welfare, available at http://www.aseancompetition.org/files/documents/content/articles_publications/94-competition-and-welfare_1379406757.pdf (accessed 28 February 2014).

[9] Competition Commission of Mauritius, 2011, Evaluation of CCM case: IBL consumer goods sales contracts with retail stores, available at http://www.ccm.mu/English/Documents/Investigations/INV001-EvaluationReport-Non-Confidential.pdf (accessed 13 February 2014).

service quality and lower prices.[10] An example of another type of abusive conduct is provided in box 1.

Box 1. Pakistan: Tying laptop sales to educational services

After Bahria University made it mandatory for all incoming students to buy laptops imported by the institution, the Competition Commission of Pakistan investigated and decided that this conduct tied the sale of laptops to the provision of educational services by the university, which already held a dominant position in the education programmes market in the Islamabad area. Furthermore, not only was the students' choice of laptops constrained, but they were not informed of the mandatory laptop purchase at the time of admission and this practice caused a further distortion of competition in the laptop market. Finally, students who bought laptops through an instalment payment arrangement were forced to accept a loan with a 12.65 per cent interest rate and were disadvantaged vis-à-vis students in regional markets, where educational loans were available at an interest rate of between 0 and 8 per cent. Following the authority's investigation, the University agreed to refund PRs 10 million to students who had purchased laptops through an instalment payment arrangement. The decision benefited both current and future students through a rebate in the interest rate and by preventing future use of this tying practice.

Source: Contribution from Pakistan to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

13. Excessive pricing is another possible abusive conduct. Competition authorities rarely enforce competition laws against excessive pricing by dominant firms, given the practical difficulties in determining what constitutes an excessive price and the effects of such practices. However, competition authorities in China and South Africa have recently handled excessive pricing cases. The competition authority in China fined dominant firms for excessive pricing in the sale of Guangdong river sand used in major infrastructure projects and ordered the firms to sell the river sand within six months of the decision at a price below a specified ceiling. The Competition Commission of South Africa asked the Competition Tribunal to impose a fine of 10 per cent of the turnover of a chemical producer for excessive pricing for propylene and polypropylene used in plastics. Both cases deal with the pricing of goods sold to business consumers. Nevertheless, when excessively priced goods are inputs into final consumer goods, such conduct can affect a wide range of products, thereby ultimately causing harm to consumers.[11]

3. Mergers

14. Another competition enforcement area is merger control. A merger between competing firms might affect competition in the relevant market. Therefore, competition authorities analyse the potential effects on competition of proposed mergers, based on criteria that include post-merger market shares, market concentration, barriers to entry, vertical integration and product differentiation in affected markets. Competition authorities may correct for the competition-reducing effects of mergers through structural and behavioural remedies. For example, in 2012, a merger proposal was notified to the

[10] T Matsuura and M Sunada, 2009, Measurement of the consumer benefit of competition in retail outlets, Research Institute of Economy Trade and Industry, available at http://www.rieti.go.jp/en/publications/act_dp2009.html (accessed 22 April 2014).

[11] M Coleman et al., 2014, Australia: Excessive pricing – will antitrust authorities intervene?, available at http://www.mondaq.com/australia/x/289482/Cartels+Monopolies/Excessive+pricing (accessed 12 February 2014).

competition authority in Mexico at the time, in which Nestlé S.A. intended to purchase the infant formula and nutrient division of Pfizer Inc. in Mexico. The authority concluded that the proposed merger would result in a 71 per cent market concentration in two types of infant formula and that Nestlé would obtain control of three out of four processing facilities for these products in Mexico. Price increases of between 2.9 and 11.5 per cent were also estimated. Furthermore, the proposed merger presented potential anti-competitive effects in other Latin American countries, since Pfizer's production plant in Mexico exports a significant volume of these products to Chile, Colombia, Ecuador, Peru and the Bolivarian Republic of Venezuela. The authority decided to block the transaction. Subsequently, the parties submitted a proposal of remedies to eliminate anti-competitive effects. A settlement was reached requiring the divestment to a third party of all assets necessary to maintain the presence of the infant formula and nutrient division of Pfizer in the Mexican market. This example shows how a merger considered to be anti-competitive was successfully handled by a competition authority.[12]

4. Bid-rigging in public procurement

15. Public procurement is another important area where competition law enforcement benefits consumers. Public procurement represents, on average, between 13 and 20 per cent of gross domestic product worldwide and is therefore significant in terms of allocation and use of public funds, i.e. taxpayers' money.[13] Competition policy may help to ensure that public procurement is conducted in a transparent and competitive manner. Bid-rigging increases the prices a Government pays to goods and services providers and competition law enforcement is crucial in detecting and preventing bid-rigging cartels in public tenders. Box 2 provides an example of the high level of savings that may be achieved by undertaking competitive public procurement processes.

Box 2. Mexico: Competition authority's recommendations result in savings for the Mexican Institute of Social Security

In 2006, the competition authority identified collusion in the public procurement process of the Mexican Institute of Social Security in public tenders for human insulin and electrolytic solutions between 2003 and 2006. The Institute is the third largest public purchaser in Mexico and the largest single buyer of pharmaceuticals and medical supplies in Latin America. In January 2010, the authority imposed a fine of Mex$ 151.7 million on the bid-rigging cartel of six pharmaceutical companies. After implementing the authority's recommendations, including consolidated purchases, reverse tendering, reduced reference prices and opening of bidding procedures to international suppliers, the Institute saved approximately Mex$ 46 billion between 2006 and 2011.

Source: Contribution from Mexico to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

16. As a further example, the Competition Commission of South Africa detected and settled collusive tendering in the construction industry between 2011 and 2013. More than 300 contracts in large-scale public-sector projects, such as stadium and road construction, were found to be rigged to the value of US$ 4.6 billion. Settlement agreements were

[12] Contribution from Mexico to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

[13] OECD, 2013, available at http://www.oecd.org/gov/ethics/meetingofleadingpractitionersonpublic procurement.htm (accessed 22 April 2014).

reached with construction companies and penalties imposed amounted to US$ 146 million.[14] Effective competition law and anti-corruption enforcement are thus crucial in ensuring that public procurement is free from anti-competitive and corrupt practices that harm consumers.

B. Competition advocacy

17. Competition advocacy as defined by the International Competition Network (ICN) refers to "those activities conducted by the competition agency related to the promotion of a competitive environment by means of non-enforcement mechanisms, mainly through [its] relationships with other governmental entities and by increasing public awareness of the benefits of competition".[15] Competition advocacy is especially crucial in the transition from a monopolistic to a liberalized market through privatization and deregulation in sectors such as telecommunications and energy. Interest groups, such as incumbent providers, are well organized and have the power to lobby Governments for measures restricting market entry and competition, which may adversely affect consumers. By contrast, consumers cannot easily organize to make their voices heard. Competition authorities may amplify the voices of consumers and advocate for pro-competitive policies that take into account consumers' interests. As noted in the secretariat's note on communication strategies of competition authorities as a tool for agency effectiveness, competition advocacy is an influential tool in preventing anti-competitive conduct and facilitating competition, as well as protecting consumer interests.[16] An example of this is provided in box 3.

Box 3. Spain: Transport alternatives gained through competition advocacy

The Province of Bizkaia gave an exclusive concession to a company to provide transport services between Vitoria and Bilbao, a route used mostly by university students in Vitoria commuting to Bilbao to attend classes. The tariffs of the concessionaire were considered too high and students arranged for student-only transportation along the route served by the concessionaire, in compliance with transport law. Fees for this alternative transport were to be much lower than those of the concessionaire. The latter lodged a complaint with the city administration, which then refused to give permits to the student platform for their scheme. The competition authority intervened and held several meetings with the interested parties, ultimately submitting a report justifying the platform's initiative and requesting the authorities to issue the necessary permits to allow the platform to begin services.

Source: Basque Competition Authority. Report of the Basque Competition Defence Tribunal. 2011. Available at http://www.competencia.euskadi.net/contenidos/informacion/informes/es_informes/adjuntos/INFORME%20TRASPORTE%20REGULAR%20DE%20USO%20ESPECIAL.pdf (accessed 29 April 2014).

18. Competition advocacy thus eventually benefits consumers. A further example is seen in the case where the Competition Commission of Pakistan advocated for enhancing competition in a small but crucial segment of Pakistan's air transportation market: the route between Pakistan and Mecca, Saudi Arabia. The authority's recommendations were

[14] D Lewis, OECD, 2014, Fighting corruption and promoting competition, background note prepared for the Global Forum on Competition.

[15] ICN Advocacy Working Group, 2011, ICN Advocacy Toolkit Part I: Advocacy Process and Tools, presented at the Tenth ICN Annual Conference, available at http://www.internationalcompetitionnetwork.org/uploads/library/doc745.pdf (accessed 15 April 2014).

[16] TD/B/C.I/CLP/28.

implemented by the civil aviation authority, resulting in four new airlines entering the market and a decrease in the cost of air travel for consumers.[17]

II. The interface between competition and consumer policies

19. The ultimate goal of competition and consumer policies is to enhance consumer well-being. The *United Nations Guidelines for Consumer Protection* establishes the link between competition and consumer protection and states: "Governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost."[18] The secretariat's note on the United Nations set of principles and rules on competition emphasizes the importance of competition policy and law in protecting and promoting social welfare in general, but particularly the interests of consumers, in both developed and developing countries.[19] In some jurisdictions, consumer welfare or the protection of consumer interests is an explicit objective of competition law, for example in Australia, India, Indonesia, Japan, Serbia, the United Republic of Tanzania and Zambia. Some jurisdictions, such as Canada and South Africa, have gone further and defined the purpose of their competition acts as the promotion and maintenance of competition in order to, inter alia, "provide consumers with competitive prices and product choices".[20,21] Other jurisdictions set priorities based on potential harm to consumers. For instance, the European Commission states that in applying article 82 of the Treaty establishing the European Community to exclusionary conduct by dominant undertakings, the Commission will focus on those types of conduct most harmful to consumers.[22] The Federal Trade Commission of the United States of America "promotes competition in industries where consumer impact is high, such as health care, real estate, oil and gas, technology and consumer goods".[23]

20. Competitive markets provide incentives for firms to offer quality products and services at the best prices. Some consumer policy concerns, such as product and service standards, may thereby eventually be addressed. Nevertheless, with the growing complexity of products and services, the increasing share of services in household consumption totals, the development and rapid diffusion of information and communications technology and the opportunities these offer to consumers, markets have become more vulnerable to fraudulent and deceptive practices.[24] Therefore, there is a growing need for consumer policy, which provides mechanisms to compensate for market failures and protects consumers' interests. Consumer policy interventions ensure that consumers are correctly

[17] World Bank Group, 2013, Announcing the winners of the 2013 competition advocacy contest, available at https://www.wbginvestmentclimate.org/advisory-services/cross-cutting-issues/competition-policy/winners-2013-competition-advocacy-contest.cfm (accessed 22 April 2014).

[18] UNCTAD, 2003, *United Nations Guidelines for Consumer Protection* (New York, United Nations publication).

[19] TD/RBP/CONF/10/Rev.2.

[20] Canada, Minister of Justice, *Competition Act*, 2010, available at http://www.laws.justice.gc.ca/eng/acts/C-34/index.html (accessed 22 April 2014).

[21] South Africa, *Competition Act*, 2000, available at http://www.compcom.co.za/the-competition-act/ (accessed 22 April 2014).

[22] European Commission, 2009, Communication from the Commission: Guidance on the Commission's enforcement priorities in applying article 82 of the European Community Treaty to abusive exclusionary conduct by dominant undertakings, available at http://ec.europa.eu/competition/antitrust/art82/ (accessed 22 April 2014).

[23] UNCTAD, 2008, *The Effects of Anti-competitive Business Practices on Developing Countries and Their Development Prospects* (New York and Geneva, United Nations publication).

[24] OECD, 2010, *Consumer Policy Toolkit*, Paris.

and sufficiently informed by advertising and labelling, that they are provided with fair contract terms and obligations and that their rights are respected. Related policy instruments make consumer choice an effective element in strengthening competition and send signals to firms that misleading and deceptive practices will not go unpunished. Informed consumers, being aware of their rights, may promote competition in markets by exercising choice. For instance, some consumer protection measures adopted by the European Union, such as the Unfair Commercial Practices Directive, adopted in 2005, aim to "enhance competition on the merits and real choice by banning unfair practices such as misleading advertising" and aggressive commercial practices.[25] The Directive also aims at facilitating cross-border advertising in the European Union, thereby reinforcing competition in the retail sector.

21. Competition and consumer policies reinforce each other in achieving their goals. The traditional view is that competition policy deals with the supply side of the market while consumer policy addresses the demand side. However, there is increasing recognition that the two policies should be coordinated to facilitate a whole-market approach and that competition and consumer authorities should share information and coordinate enforcement and advocacy measures. The decision of the Netherlands Authority for Consumers and Markets to fine an airline for unfair commercial practices[26] is an example where consumer protection law was enforced not only following consumer complaints but also complaints from competitors of the airline.[27] Consumer law enforcement may thus strengthen competition by addressing unfair commercial practices. Box 4 provides an example of the interaction between competition and consumer policies in the health-care sector.

Box 4. Chile: Price comparison in medical services

An agreement signed between the National Consumer Service (Sernac), the health authority and the association of private clinics in Chile provides an example of a pro-competitive consumer policy intervention. The objective of the agreement, which took effect in June 2013, is to ensure that patients are informed by clinics prior to treatment of the charges for medical services, allowing consumers to compare the prices of clinics across 20 service areas. Prior to this agreement, patients were provided only with estimates of total costs and price comparisons of different items included under treatment options were not possible. The possibility of ex-post abusive billing by clinics may now be avoided.

The market failure addressed by this regulation had been detected by the competition authority following an investigation into the market for private clinics. Evidence of excessive charges for drugs and medical supplies by a particular clinic was found and the market study concluded that the possibility of abuse was due to the lack of choice of admitted patients. This market failure could be remedied by a general regulation covering all health-care providers and targeting the decrease of choice of patients once

[25] Contribution from the European Commission to Session IV on the Interface between Competition and Consumer Policies, 8 February, Global Forum on Competition. 21 and 22 February 2008.

[26] Lexology, 2013, Netherlands Consumer Authority imposes fine of EUR 370,000 on Ryanair, available at http://www.lexology.com/library/detail.aspx?g=6b0efb3f-71ac-4aee-8497-0f990b5b6dc6.

[27] Contribution from the Netherlands to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

admitted to clinics. The competition authority submitted this study and its findings to the health authority, which then took action. This case demonstrates the complementary nature of competition and consumer policies and the role of cooperation between relevant authorities in identifying appropriate remedies to address market failures in favour of consumers.

Source: Contribution from Chile to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

22. The complementary nature of competition and consumer policies has become increasingly relevant in today's complex product markets. For instance, the United States Federal Trade Commission and the Department of Justice have used both competition law enforcement and consumer policy tools to promote the benefits of competition to consumers in real estate markets. Both supply- and demand-side concerns were addressed by eliminating barriers to competition through enforcement and advocacy and providing consumers with information, including on deceptive advertising on mortgages, thereby empowering them to make well-informed decisions.[28] Some States implement special oversight mechanisms to address competition and consumer concerns in certain markets. In the Netherlands, for instance, the Authority for Consumers and Markets established a specialist unit, the Monitor Financial Sector, to oversee competition issues in the financial sector by conducting research and issuing policy recommendations to protect and promote competition. Ensuing research on price comparison sites for savings products, competition risks in the property finance market, shopping for financial products, barriers in retail banking markets and the Netherlands mortgage market, has provided insight into competition concerns in this market that could harm consumers.[29] Box 5 provides a further example of how consumer remedies promote competition in the market.

Box 5. Australia: Consumer enforcement against misleading advertising

The Australian Competition and Consumer Commission alleged that Apple, in marketing its new iPad in Australia, had advertised that the device would connect to 4G networks in Australia. However, due to hardware incompatibility, the device could not connect to these networks. The issue was resolved in June 2012 by the Federal Court, which required Apple to inform consumers that the device could not connect to 4G networks in Australia and imposed a fine for misleading advertising. This consumer enforcement case had competition implications because Apple's competitor Samsung sells tablets compatible with 4G networks in Australia.

Source: R Sims (2012). Exploring the possibility of coordinating competition and consumer policy. Presented at the Seventh Seoul International Competition Forum. 4 September.

23. Consumer policies ensure that consumers are well informed to make rational decisions, thereby exercising choice and stimulating competition. However, the findings of behavioural economics suggest that consumers have biases, which include processing-power biases (such as choice overload), representational biases (visible value as an indicator of hidden value), framing biases (such as relative utility), default and placement biases, time-inconsistency biases (such as projection bias) and over-optimism and loss-aversion biases. These behavioural biases have implications for both competition and

[28] Contribution from the United States to session IV on the Interface between Competition and Consumer Policies, 16 January, Global Forum on Competition. 21 and 22 February 2008.

[29] Contribution of the Netherlands, 17 February 2014, OECD round table on the role of competition in financial consumer protection. February 2014.

consumer policies. Consumers' behavioural biases point to the importance of the demand side in activating competition in markets and making markets work for consumer welfare.[30] Accordingly, on the demand side, policies need to ensure that consumers can access and assess necessary information to make well-informed decisions. Consumer law enforcement, market scans and effective communication to help de-bias consumers are considered to be the best tools to address consumer biases.[31] However, consumer policy alone is not sufficient. On the supply side, firms may try to exploit behavioural biases and engage in abusive or anti-competitive practices. Thus, both competition and consumer law and policy should be used to address failures caused by consumers' biases.

24. There may also be tensions between competition and consumer welfare. Fierce competition may result in unethical or criminal behaviour by firms in order to obtain a relative competitive advantage vis-à-vis competitors. The objective of gaining such an advantage was the driving force behind the risky conduct of overleveraged financial institutions prior to the financial crisis in 2008.[32] There may be situations where competitive markets do not promote consumer interests, such as in cases of externalities, particularly in environmental goods, as well as cases of common property resources, such as fisheries, and of public goods. In such cases, there is a need for Government regulation to ensure that consumer interest objectives are attained.[33]

25. Despite their being complementary policies, situations may arise where competition policy poses new challenges for consumers and where consumer policies have competition implications. The OECD provides some examples of such situations.[34] For instance, financial liberalization, the deregulation of public utilities and the liberalization of professional services may create new challenges for consumers. Incentives for market participants may change after exposure to more competition in ways that raise consumer protection concerns. In newly liberalized markets, incumbent firms may engage in locking in of consumers by rendering switching to competitors more difficult or costly, while new entrants may engage in aggressive marketing practices to expand their market shares. The Authority for Consumers and Markets in the Netherlands, for example, imposed a fine on a new but aggressive energy supplier for misleading doorstep selling.[35] In such circumstances, there is a need to combine short-term goals with long-term strategies to benefit consumers. Consumer law enforcement may serve consumers in the short term by ending unfair commercial practices, but if measures are too strict, new market players may withdraw from markets, negating the long-term goal of more competitive markets with

[30] United Kingdom of Great Britain and Northern Ireland, Office of Fair Trading, 2010, What does behavioural economics mean for competition policy?, available at http://www.oft.gov.uk/shared_oft/economic_research/oft1224.pdf (accessed 22 April 2014).

[31] The Netherlands Authority for Consumers and Markets, 2013, Behavioural economics and competition policy, available at https://www.acm.nl/nl/download/publicatie/?id=11586 (accessed 22 April 2014).

[32] ME Stucke, 2013, Is competition always good?, *Journal of Antitrust Enforcement*, vol. 1, No. 1 (February 2013).

[33] UNCTAD, 2008, *The Effects of Anti-competitive Business Practices on Developing Countries and Their Development Prospects* (New York and Geneva, United Nations publication).

[34] OECD, 2008, The interface between competition and consumer policies, Global Forum on Competition.

[35] The Netherlands Authority for Consumers and Markets, 2014, Consumer authority penalizes Greenchoice for misleading doorstep selling, available at https://www.acm.nl/en/publications/publication/7460/Consumer-Authority-penalises-Greenchoice-for-misleading--doorstep-selling/ (accessed 22 April 2014).

better outcomes for consumers.[36] For instance, mandatory product standards or prohibitions on comparative advertising may exclude low-cost entrants and products.[37] Transparency requirements in prices benefit consumers, but may facilitate collusion among firms. Striking the right balance between short- and long-term objectives is crucial.

26. One way to avoid tensions between competition and consumer policies is to effect coordination between relevant policies to ensure policy coherence in addressing market problems and to select the most appropriate policy tools. The following chapter discusses ways to enhance consumer benefits by coordinating competition and consumer protection policies and enforcement.

III. Ways to enhance consumer benefits from competition policy

A. Coordination between competition and consumer policies

27. There is a need for policy coordination in order to address the sources of market failures and choose appropriate combinations of policy measures. Regardless of the institutional setting in competition and consumer policy implementation, one way to achieve policy coordination is to focus on consumers' interests in both competition law and consumer protection advocacy and enforcement. Competition law enforcement can be coupled with consumer empowerment. Voluntary solutions and business and consumer education may complement enforcement efforts. Moreover, social media and communications tools may be used to coach consumers, particularly in regulated markets, to assist consumers in switching suppliers.[38]

28. Increased competition may not necessarily improve outcomes for consumers in markets where consumers do not make well-informed decisions or switch suppliers. Firms may not have sufficient incentive to compete by offering better quality products and services, instead adopting complex pricing schemes and making comparisons harder or engaging in misleading advertising. The credit card market is an example of an area where such practices may increase in parallel with the number of competitors.[39] These situations need to be addressed through better policy coordination. Market studies may provide insight into competition and consumer issues in markets and facilitate solutions for detected problems. Competition law enforcement, coupled with consumer empowerment, may ensure that consumers make the right choices and that firms refrain from unfair practices and do not abuse market power. Box 4 in the previous chapter provides an example of coordination between competition and consumer authorities.

29. The remittances market related to money transfers is an area where policy coordination is essential and the degree of competition is the key price determinant. Lower fees increase remittances, thereby contributing to the inclusion of those excluded from formal financial systems, especially in developing and least developed countries. For instance, as noted in the secretariat's note on consumer protection and competition policy, increased competition lowered the price of remittances sent from the Group of Eight

[36] Contribution from the Netherlands to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

[37] OECD, 2008, The interface between competition and consumer policies, Global Forum on Competition.

[38] C Fonteijn, 2013, presentation at the European Competition and Consumer Day in Dublin, 24 May.

[39] ME Stucke, 2013, Is competition always good?, *Journal of Antitrust Enforcement*, 1(1).

countries.[40] However, both competition and consumer policies are necessary to improve consumer welfare in this field. Competition policy measures include facilitating the market entry of finance institutions and restricting exclusive agreements between money transfer companies and agents. Consumer policy should focus on consumer education in order to increase the information available to remittance senders, in turn reinforcing competition. In some cases, competition and consumer policies need to be complemented by appropriate regulatory frameworks. As *The Least Developed Countries Report 2012* states: "Promoting competition raises regulatory issues, primarily the need to ensure the reliability and integrity of the transfer systems and to avoid the system being abused (e.g. for money laundering), which is why only regulated financial service entities are usually permitted to provide remittance services."[41]

30. There is a recent trend to consolidate competition law enforcement and consumer protection in a single institution in order to create synergies between these two functions. For example, the Netherlands Authority for Consumers and Markets was created in April 2013 by consolidating the Consumer Authority, the Independent Post and Telecommunication Authority and the Competition Authority. The authority's primary goal is to increase consumer welfare and its mission is to promote opportunities and options for businesses and consumers. The Australian Competition and Consumer Commission, the newly-created Competition and Markets Authority in the United Kingdom and the Federal Trade Commission of the United States are other examples of authorities with dual responsibilities for competition and consumer law enforcement.

31. In States where competition and consumer protection are housed in separate authorities, there are other mechanisms for cooperation. In 2012, the competition authority in Brazil, the Administrative Council for Economic Defence (CADE), and the National Consumer Agency (Senacon) signed a technical cooperation agreement to exchange information and engage in joint actions to strengthen consumer protection and effectively fight competition law violations affecting consumers. In this framework, the competition authority provides information from studies on competition issues in specific sectors that have implications for consumers, informs the consumer agency of its decisions in competition cases relevant to the latter's work and reports on mergers that may affect consumers' interests. In turn, the consumer agency provides information to the competition authority, when requested, acts with the authority to identify and enforce liability measures against firms that have already been investigated and condemned for anti-competitive practices and whose conduct is relevant nationwide and has general repercussions, and informs the competition authority of any evidence of anti-competitive practices.[42]

B. Coherence between competition, consumer and regulation policies

32. There is a need for coherence between competition and consumer policies and regulatory policies to enhance consumer welfare and economic efficiency. Vickers and Yarrow stress the importance of competition and regulatory policies in enhancing efficiency in post-privatization situations, highlighting that competition rather than ownership is fundamental for efficiency in competitive product markets. In the case of industries characterized by natural monopolies, the authors state that the major factor

[40] TD/B/C.I/EM/2.

[41] UNCTAD, 2012, *The Least Developed Countries Report 2012: Harnessing Remittances and Diaspora Knowledge to Build Productive Capacities* (Geneva, United Nations publication).

[42] Contribution from Brazil to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

influencing efficiency is regulatory policy. For instance, privatization experiences in the United Kingdom show that market entry does not of itself always lead to effective competition and that regulation for competition may be desirable to complement privatization.[43] Likewise, the chair of the Australian Competition and Consumer Commission has stated that "deregulation never means no regulation... When sectors are deregulated there is all the more need for strong, economy-wide and effective competition regulation".[44]

33. In Brazil, in 1997, the privatization of telecommunications services provider Telebrás through public concession and the creation of the National Telecommunications Regulatory Agency (Anatel) benefited consumer access to services. This structural reform intended to promote the universal availability of services, stimulus to competition and technological development. Following privatization, the number of mobile telephones per 100 inhabitants increased from 2.7 in 1996 to 99.9 in 2006 and to 268.3 in 2013.[45] Box 6 provides another example of competition policy combined with sound economic regulation in liberalized sectors that benefits consumers in the long term.

Box 6. Australia: Benefits of the National Competition Policy for consumers in deregulated markets

Australia implemented economy-wide reforms under its National Competition Policy framework, which was developed in 1995. Three of the major aspects of the policy included the review and reform of all regulations that restricted competition, structural reform of public monopolies to facilitate competition and the provision of third-party access to certain facilities essential for competition. All of these elements concerned previously State-owned public utilities and involved privatization and deregulation. Some of the sector specific benefits of the policy for consumers included the following:

(a) In the electricity sector, average real prices in Australia fell by 19 per cent between the early 1990s and 2004.

(b) In the telecommunications sector, average charges fell by 29 per cent for businesses and 17 per cent for households between 1996 and 2003.

(c) Rail freight rates decreased substantially in the second half of the 1990s, ranging from 8 per cent for wheat up to 42 per cent for some coal traffic.

In addition, following deregulation in 2000, the average retail price of milk fell by 5 per cent in real terms, despite the imposition of an industry assistance levy of 11 cents per litre to assist dairy farmers in the transition.

Source: R Sims (2013). Driving prosperity through effective competition. Presented at the Mexico Forum, Mexico City. 8 January.

34. Cseres (2008) argues that opening up formerly monopolistic markets, such as electricity, gas and telecommunications, to increased competition has not yet resulted in expected consumer benefits. This is due to the lack of either appropriate regulation or sufficient regulatory powers in some cases and demand-side failures in others, such as

[43] J Vickers and G Yarrow, 1991, Economic Perspectives on Privatization, *Journal of Economic Perspectives*, 5(2).

[44] R Sims, 2013, Driving prosperity through effective competition, presented at the Mexico Forum, Mexico City, 8 January.

[45] Contribution from Brazil to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

information asymmetries, complexity in making choices, high search and switching costs and imperfect decision-making processes. Cseres thus stresses the importance of coherence and coordination between competition policy, consumer policy and regulation.[46] As an example, the experience in Hungary with liberalization of the telecommunications market demonstrates the significance of complementary policies in realizing expected benefits for consumers in liberalized markets. The late introduction of sector regulation in Hungary, as well as insufficient enforcement powers, attributed to the fact that the regulator retarded competition and allowed an incumbent firm to retain its dominant position. Consequently, abuse of dominance and misleading practices by the incumbent were observed. The competition authority advocated for competition and consumer issues with other agencies. However, there was no mechanism to assist in switching to new providers and consumers failed to do so. This prevented the facilitation of competition in the market, failing to incentivize the incumbent to offer better deals. There are, moreover, situations where liberalization does not necessarily generate the expected benefits for consumers and Governments may revert to regulation. An example of such a situation is provided in box 7.

Box 7. The Netherlands: Liberalization does not always benefit consumers

Following deregulation of the Netherlands taxi sector in 2000, the number of taxis in the country increased from 16,000 in 2000 to 23,000 in 2002 and to 45,000 in 2009. However, the increase in supply was not accompanied by price decreases, and taxi prices increased by 25 per cent in this period, whereas quality decreased as a result of fierce competition. Consumers were aggressively approached and taxi stands became precarious places due to conflicts between taxi drivers. Therefore, in 2011, a new law was introduced that required every taxi driver to be registered with the relevant authority.

Source: Contribution from the Netherlands to the UNCTAD round table on the benefits of competition policy for consumers, fourteenth session of the Intergovernmental Group of Experts on Competition Law and Policy. Geneva, 8–10 July 2014.

35. Even when there is competition, appropriate regulatory frameworks are in place and consumers are informed about products and services, consumers do not always choose their best options. Switching costs and the complexity of products and pricing may contribute to this outcome. Switching costs include time and financial costs, compatibility costs, especially in technology-intensive industries, learning costs, contractual switching costs such as in frequent flyer programmes, search costs that involve time and effort, uncertainty costs and psychological costs such as in medical services.[47] Switching costs may prevent consumers from achieving optimal outcomes and arise when transaction, learning or pecuniary costs are incurred by users who change suppliers.[48] The OECD notes low rates of switching in the banking sector due to significant and unclear switching costs.[49] Information asymmetries add to switching costs, especially in loan and credit card markets.

36. Switching costs affect both competition and consumers. Therefore, Governments and regulators need to understand switching costs in order to be able to promote competition effectively. In cases where switching costs adversely affect competition and

[46] KJ Cseres, 2008, What has competition done for consumers in liberalized markets?, *The Competition Law Review*, 4(2).

[47] United Kingdom, Office of Fair Trading, 2003, Switching Costs, Economic Discussion Paper 5, available at http://www.oft.gov.uk/shared_oft/reports/comp_policy/oft655.pdf (accessed 22 April 2014).

[48] P Klemperer, 2005, Switching costs, *The New Palgrave Dictionary of Economics*, available at http://www.paulklemperer.org/ (accessed 22 April 2014).

[49] OECD, 2014, Role of Competition in Financial Consumer Protection, Competition Committee, 26 February.

raise average price levels, thereby causing consumer detriment, competition authorities and sector regulators may take necessary measures to reduce or eliminate harm to consumers caused by switching costs. The importance of understanding switching costs has been emphasized by analysts with the rise of information technologies. Shapiro and Varian (1999) state that one cannot compete effectively in the information economy unless one knows how to identify, measure and understand switching costs and map strategy accordingly.[50] Businesses are not unique in needing to be aware of and understand switching costs.

37. The experience of the Netherlands in electricity market liberalization shows that providing information on the market options available to consumers may not be enough to achieve a sufficient rate of switching to new service providers. Between July 2004, when the electricity market was opened up, and November 2007, only 14 per cent of consumers switched to other providers. Barriers to switching included administrative burdens and the time and cost of accessing comparable information necessary for making decisions.[51] Consumers were provided with comparative information both by the Government and the industry through websites. Such oversupply of information may be counterproductive and even confuse consumers, thus preventing switching. The disclosure of information should be complemented by accessible and manageable information for consumers. Such examples strengthen the view that coordination and coherence between competition and consumer policies and regulations are essential.

C. Consumer empowerment

38. Governments recognize the role that informed consumers play as drivers of innovation, productivity and competition. In order to drive competition, consumers need objective, transparent and easily accessible and manageable information to make rational decisions that best respond to their needs and interests. In this context, consumer empowerment has become more important in today's changing markets of new and complex products and services.[52] Consumer empowerment may be achieved through consumer education, as well as facilitating consumer access to information and enhancing the capacity of consumers to assess information correctly to make optimal decisions. Consumer empowerment in markets which offer relatively more complex products may be more effective than regulatory interventions to solve problems. The experience of the Netherlands authority has shown that problems identified in financial markets are often solved by empowering consumers rather than by imposing product or other types of regulations.[53] The use of coaches may prove useful in markets such as energy and financial services, where switching providers would potentially save consumers money and enhance competition between providers.[54]

39. Competition authorities may help empower consumers through advocacy in coordination with other government agencies. For instance, the Competition Council in the Republic of Moldova helped empower consumers in the telecommunications sector by working with the telecommunications regulator to provide consumers with relevant

[50] C Shapiro and HR Varian, 1999, *Information Rules: A Strategic Guide to the Network Economy*, Harvard Business School Press, Boston.

[51] KJ Cseres, 2008, What has competition done for consumers in liberalized markets?, *The Competition Law Review*, 4(2).

[52] OECD, 2010, *Consumer Policy Toolkit*, Paris.

[53] Contribution of the Netherlands, 17 February 2014, OECD round table on the role of competition in financial consumer protection. February 2014.

[54] C Fonteijn, 2013, presentation at the European Competition and Consumer Day in Dublin, 24 May.

information on traffic and prices in the Internet market.[55] Other government agencies also work to empower consumers and address information deficiencies by providing information. Since July 2008, the Australian Securities and Investment Commission has been the government agency responsible for financial literacy. The Commission's regulatory role includes consumer protection against unfair and illegal conduct in financial services and consumer credit, and the Commission has developed a website for informing the public and enabling them to make the best decisions to improve their personal finances.

IV. Questions for discussion

40. Suggested questions for discussion include the following:

(a) How important is the independence of competition and consumer authorities in ensuring effective enforcement and advocacy for the benefit of consumers and avoiding the risk of capture?

(b) Is liberalization and deregulation of formerly monopolistic markets sufficient to trigger competition and ensure that consumers exercise choice and benefit from such policies? What policies and measures are needed to achieve the expected positive outcomes from liberalization for consumers?

(c) How can coherence be achieved between competition, consumer protection and regulation to promote and protect consumers' interests? What role can competition authorities play to ensure such coherence?

(d) How best can coordination between competition and consumer policies towards enhancing consumer welfare be achieved? What are the advantages and disadvantages of having a single authority responsible for enforcing both competition and consumer protection laws? How is policy coordination achieved between separated competition and consumer authorities? Does the institutional setting matter for policy coordination?

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[55] World Bank Group, 2013, Announcing the winners of the 2013 competition advocacy contest, available at https://www.wbginvestmentclimate.org/advisory-services/cross-cutting-issues/competition-policy/winners-2013-competition-advocacy-contest.cfm (accessed 22 April 2014).

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Communication strategies of competition authorities as a tool for agency effectiveness

Note by the UNCTAD secretariat

Executive summary

Comprehensive communication strategies are one of the most powerful tools competition authorities possess to establish, maintain and promote competition culture. When used effectively, communication strategies can educate and engage the general public, increase compliance with competition laws, shape policy debates and empower competition authorities. The use of media to carry out advocacy activities is a fundamental aspect of any communication strategy.

This note discusses the importance of general and media advocacy and explores media advocacy activities in detail. Advocacy strategies across key sectors of the media are outlined, and methods of evaluating media advocacy strategies are described. Case studies and descriptive and comparative statistics are presented, based on authorities' responses to a survey distributed by the UNCTAD secretariat.

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I. What is a communication strategy?

1. An effective competition authority may be defined as one that achieves its objectives by using its available resources in the most efficient and appropriate manner. However, a competition authority is only one of many stakeholders in a competition environment, where other government ministries and agencies, the judiciary, the business community, non-governmental organizations and the general public all take action to achieve their own aims. The effectiveness of a competition authority is naturally affected by its place in this complex environment and indeed its effectiveness may be further defined by the manner in which it interacts with and modifies this environment.

2. As such, a well-developed and comprehensive communication strategy is one of the most powerful tools competition authorities possess to establish, maintain and promote competition culture. Experiences of both mature and young competition authorities indicate that a communication strategy, when used effectively, can educate and engage the general public, increase compliance with competition laws, shape policy debates and empower competition authorities.

3. A key element of any communication strategy is the use of media to carry out advocacy activities. Accordingly, this note explores the communication strategies of competition authorities in the context of media advocacy activities. The importance of advocacy is discussed, both briefly in a wider context and in detail in the case of media activities, with particular attention given to the ways in which media advocacy promotes the competition environment. Media advocacy strategies across key sectors of the media are outlined, including press and print, television and radio, and new media. The importance and methods of evaluating media advocacy strategies are also discussed at length. Case studies and descriptive and comparative statistics are presented, based on authorities' responses to a survey distributed by the UNCTAD secretariat. Finally, questions are raised for further discussion on the topic.

4. This note is based on studies undertaken by national and international organizations, academic papers and responses from national competition authorities to the UNCTAD survey.

II. Advocacy as part of a communication strategy

A. What is advocacy?

5. There is no single, all-purpose definition of competition advocacy because competition authorities around the world need to use advocacy to deal with a variety of challenges. Competition advocacy as defined by the International Competition Network (ICN) refers to "those activities conducted by the competition agency related to the promotion of a competitive environment by means of non-enforcement mechanisms, mainly through [its] relationships with other governmental entities and by increasing public awareness of the benefits of competition".[1]

[1] ICN Advocacy Working Group, 2011, ICN Advocacy Toolkit Part I: Advocacy Process and Tools, presented at the Tenth ICN Annual Conference, available at http://www.internationalcompetitionnetwork.org/uploads/library/doc745.pdf (accessed 15 April 2014).

6. Competition advocacy comprises the following: "initiatives undertaken by the competition authority towards other public entities in order to influence the regulatory framework and its implementation in a competition-friendly way [and] all activities by competition authorities aimed at raising the awareness of economic agents, public authorities and the public at large about the benefits of competition to the society as a whole and about the role competition policy can play to promote and protect competition".[2]

B. Why carry out advocacy?

7. Advocacy is carried out on the basis that competition policy is desirable for a number of key reasons. In markets with a sufficient number of competitors (or potential competitors), "free competition is supposed to lead to low prices for the consumers, an efficient use of resources by the producers and maximization of social welfare".[3] As well, in a dynamic setting, competition leads to technological innovations, higher product quality, a wider range of products and improved production efficiency. Finally, "without intervention, some markets may fail to provide minimal levels of services considered of public interest".[4]

8. An argument may be made that the ultimate aim of competition advocacy should be to highlight rent-seeking behaviour by special interest groups, the costs of which may end up being borne by consumers and society as a whole, and that minimizing such behaviour, via public policy, is good for society overall. This view may be more justified in developing and transition countries where the business community, consumers and media have limited experience in identifying, challenging and seeking redress for anti-competitive practices, and where regulatory agencies and the political system have neither a tradition nor an internalized culture of free-market competition. Other justifications for competition advocacy include the existence of a statutory mandate in the constitutive act of a competition authority, such as the publication of educational and awareness programmes for competition and consumer protection and disseminating legislation passed, as well as the attractiveness for competition authorities of ex ante advocacy interventions rather than sanctions.

9. With regard to the latter justification, a number of competition analysts are of the view that advocacy is less controversial than law enforcement. For this reason, they suggest that advocacy should be prioritized in developing countries, whereby the main issue becomes how to improve the effectiveness of competition advocacy initiatives.[5] Simon Evenett outlines the following rationales identified by the ICN for undertaking competition advocacy:

(a) Competition advocacy is complementary to enforcement, by targeting government regulations as well as private sector threats to competition, through measures to eliminate, revise, deter or limit harm to the economy.

(b) Competition advocacy serves to prevent ex ante government intervention in favour of the weak economic agents who would suffer most from a faulty competitive process.

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[2] ICN Advocacy Working Group, 2002, Advocacy and Competition Policy, prepared for the First ICN Conference, available at http://www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf (accessed 15 April 2014).

[3] Ibid.

[4] Ibid.

[5] S Evenett, 2006, Competition Advocacy: Time for a Rethink, *Northwestern Journal of International Law & Business*, 26(3):495–496.

(c) By virtue of the autonomy of a competition authority, competition advocacy may serve to reduce waste that may arise from the influence of special interest groups over the decisions of government regulating agencies.

(d) In young competition regimes, advocacy to the general public is important as a tool for enhancing transparency, which helps to build support.[6]

C. How to carry out advocacy?

10. In practice, the scope of advocacy-related activities may vary widely. For example, a presentation featuring a set of bullet points about basic issues, such as how monopoly harms the public but enriches the monopolist, is a form of advocacy. An extended legal and economic argument in a sectoral regulatory process is also an example of advocacy. Advocacy-related activities can further include testifying, making written submissions or issuing papers to ministries, legislative departments, courts, sectoral regulators or municipalities. In addition, advocacy-related activities can include giving speeches to professional and trade associations, academic institutions and conferences, as well as writing articles for publication in specialized or other journals and developing an articulated strategy for media. Holding press conferences and otherwise publicly explaining the importance and implications of competition and market principles could equally be considered advocacy. A competition authority may also launch initiatives connected to current cases or antitrust concerns, such as thematic campaigns or a dedicated year of competition advocacy.[7]

11. In developing countries without well-established competition regimes, promoting competition principles to the general public is an ongoing task to be given priority not only so that the competition authority may publicize its mandates and assert its visibility, but also as a logical starting point for its overall activities. Ex ante prevention proves more cost-effective than enforcement, especially in the early years of the authority, when the link between lack of awareness and resource paucity may prove to be a vicious circle in which entrenched ways of doing business prevail. Therefore, in the early years of an authority, it would be more productive to begin with advocacy, before gradually introducing enforcement that concentrates on simple cases that are easy to evaluate. Investigation of complicated cases may be deferred until the competition culture and accumulated experience are more conducive to their conduct.[8]

III. Media advocacy

12. The desired result of any media-based communication campaign is the ability of a competition authority to be heard and to exercise influence over the policy environment. By gaining access to the media and framing problems from a public policy perspective, the competition authority can strategically apply pressure to key decision makers in order to change the environment.

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[6] Ibid., 497–500.

[7] M Skrobisz, 2012, The ABCs of advocacy: the basic principles, presented at ICN Advocacy Workshop, available at http://www.autoritedelaconcurrence.fr/doc/bos5_uokik_icn_oct12.pdf (accessed 15 April 2014).

[8] ICN Advocacy Working Group, 2002, Advocacy and Competition Policy, prepared for the First ICN Conference, available at http://www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf (accessed 15 April 2014).

13. Media advocacy involves the use of a wide range of communication strategies to advance competition policy, but not every media advocacy initiative will use every strategy. For example, focus groups and public opinion polls provide intelligence on what people think and may be used to effectively frame issues for specific audiences. Available skill sets and resources may predispose one authority to a particular type of communication, such as paid advertising or creating news. However, competition authorities must remain opportunistic and ready to take advantage of unfolding situations, no matter which combination of communication strategies they employ. At the same time, competition authorities must be wary of attracting media attention for its own sake and should employ a strategy of linking every media action to specific goals and objectives.

14. Every day, there are stories in the news to which competition authorities can link their issues. Indeed, sometimes breaking news can be anticipated. For example, competition authorities around the world know that particular events, such as world competition and consumer days, will generate substantial news coverage. Authorities can plan the release of relevant stories to coincide with such foreseen events, and stories that may be generally newsworthy on any day may become leading news when thus pegged to associated events.

15. Given the prerequisite skills to do so, authorities may wish to take advantage of the many opportunities to create news and help set media and public agendas. For example, the European Commission Directorate General for Competition conducted a study in European Union member States and Switzerland that revealed that consumers in Switzerland pay double the average rate for mobile telephones and Internet access compared to the rest of Europe. The study received widespread national coverage in Switzerland and helped put the issue of national provider Swisscom's monopoly under public scrutiny.

16. The practice of media advocacy also helps a competition authority create a trained group of media advocates and thus builds capacity within the authority for further change. An important goal of media advocacy activities may be to develop, within authority staff, a set of critical skills to complement and enhance existing competition agency and advocacy efforts, in order to pursue economic reform.

A. Role of a media advocacy strategy in promoting a competitive environment

1. Media advocacy helps raise public awareness

17. Media advocacy can help raise public awareness of both the role and actions of a competition authority, as well as the benefits of addressing anti-competitive behaviours. Stating and explaining the merits of a competitive environment in common language may help the general public to better relate to competition policy objectives. As well, the harm that anti-competitive behaviour may impose on people's livelihoods, for instance in terms of higher prices for basic goods and services, can be easily explained via a number of media, such as in newspaper articles and television and radio discussions, and on social media. In this way, media advocacy can provide the public with an idea of fairness, but also the ways and means for reporting violations and seeking justice. Further, if the benefits of a competition authority's actions are seen in the media, the public (as well as many other stakeholders) will gain a better understanding of the role competition policy plays.

18. Each of these media can be used to target specific audiences and highlight relevant issues in selected national markets. If the stories relate to issues such as wages, goods and the provision of basic services, they are likely to arouse interest across many levels of society. In this way, competition advocacy serves to popularize competition culture in public opinion and may also act as a source of political support. For example, the

popularization of competition issues directly linked to livelihoods may trigger action by consumer associations or trade unions, to pressure for a redress of unfair pricing policies.

19. Many of the respondents to the survey distributed by the UNCTAD secretariat indicated that they carry out promotional media activities to enhance the visibility of the competition authority as an effective institution in terms of policy influence and law enforcement. For instance in Latin America, the Fiscalía Nacional Económica in Chile, the Superintendencia de Industria y Comercio in Colombia and the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual in Peru are notable examples of institutions endowed with adequate autonomy and resources to effectively engage in advocacy campaigns to support and publicize their activities, utilizing different media such as the press, television and social networks.

2. Media advocacy influences the behaviour of business communities

20. As a public education tool, media advocacy has the merit of enhancing, inter alia, an a priori understanding of competition law. Media campaigns may be used to specifically target business communities, highlighting relevant issues such as abuses of dominance, cartelization and sanctions and associated leniency schemes for informers. Such campaigns may expose risks taken by offenders, contribute to improving compliance rates and incentivize participation in leniency schemes. Business-targeted media advocacy activities may be particularly important in developing or transitional economies, which may lack an established competition culture or business community with the requisite legal or technical knowledge to take preventive measures against anti-competitive practices. Furthermore, if media advocacy activities highlight the results of cases of non-compliance with competition laws, the relevant business community will be more likely to conform to competition laws.

3. Media advocacy influences the behaviour of policy makers

21. Mass media, particularly news media, plays an important role in advancing democratic discussion of policy issues. Media can often effectively set the public agenda for an issue and establish discussion boundaries. In mediated democracy, public policy battles are fought not only in the legislature but on the evening news and the front pages, over the Internet and across radio waves. Mediated information can reinforce the status quo or advance policy goals of economic reform and a competitive market. Mass media, especially news media, can amplify voices so that policymakers cannot ignore them.

4. Interaction between competition advocates, media and the polity

22. The impact of media advocacy on competition awareness and decision-making is expected to be a positive one in theory. However, this impact may be tempered by the political environment in which markets operate, including the media market itself. That is, if freedom of the press and political competition are both relatively limited, there is a high probability that the press may be subject to political interference. In such an environment, the impact of the competition authority on the course of policy through media advocacy would be lessened.

23. Another related factor is the types of obstacles that competition advocacy may encounter in certain sectors, particularly in jurisdictions where competition culture is less well entrenched. Following a survey conducted in 2002, the ICN reported that "responsible agencies in privatization processes or regulatory reform may seek among others, to maximize governmental income, protect particular social groups, foster investment by granting a certain degree of protection, attend [to] environmental or labour concerns, as

well as the preservation of sector specific interests that gain support from politicians, and may thus be reluctant to give priority to competition related recommendations".[9]

5. The use of media as a tool to detect anti-competitive practices

24. The majority of the authorities that responded to the UNCTAD survey indicated that they monitor the media for signs of anti-competitive practices. To carry out this task, most authorities (e.g. in Bulgaria, Croatia and the Czech Republic) have dedicated personnel or offices, which produce reviews (e.g. in Switzerland) and reports (e.g. in Bosnia and Herzegovina) or update internal information systems with their findings (e.g. in Poland). For example, the Competition Authority in Norway actively monitors the media through an automated search engine, using selected keywords and phrases, and in doing so has detected possible competition problems in specific markets and failures to notify regarding mergers and acquisitions.

25. Many of the respondents (e.g. Croatia, Germany, the Republic of Moldova, Serbia and Spain) noted that media information cannot be considered direct evidence in the legal system, but that it may be mentioned as a source of investigation. Often, media information is only used as an initial circumstantial indication to investigate a matter in order to find further evidence. The party presenting such information as evidence would have to prove its statements using other more reliable types of evidence.

26. In other jurisdictions (e.g. Poland, Sweden and Switzerland) the principle of free assessment of evidence is applied, meaning that, in principle, there are no restrictions on sources of evidence and that, in some cases, there are no rules that specify the weights of different types of evidence. However, many respondents from jurisdictions where media information is considered before the courts emphasized the need to rigorously establish the validity of such evidence or to provide corroborating evidence or other more substantial types of evidence. For example, the European Union will normally seek confirmation of media-obtained information directly from the source, using its regular investigatory tools. In the London Interbank Offered Rate case, for instance, the European Commission took into account publicly available information in the press. In a number of cases, the quality of media-based evidence is primarily assessed either by the authority (e.g. in Germany), an independent committee (e.g. in Sweden) or the court itself (e.g. in the Czech Republic). Outlined below are some of the case studies highlighted by survey respondents:

(a) **Czech Republic**. In one instance, poultry producers were convicted of competition distortion for agreeing on a joint price-setting strategy. Evidence included a recording made by a television channel during a meeting of poultry producers.

(b) **Denmark**. After a sales manager of a company explained to a television interviewer how companies use resale price maintenance, the ensuing case resulted in a fine of DKr 1,000,000 against the company. In another case, against potato producers, part of the evidence presented by the public prosecutor consisted of television programmes during which the producers had discussed future potato prices and their trade organization's chair had encouraged members to raise prices and limit potato production.

(c) **Norway**. In a case where two asphalt companies were fined for bid rigging, a nine-minute news story on the national broadcast network was included as a case reference, but not used as stand-alone evidence.

[9] Ibid.

(d) **Poland**. The Office of Competition and Consumer Protection has instituted proceedings in numerous cases based on media reports, including cases related to collusion on the waste market,[10] bid rigging in Wrocław[11] and broadcasting of football matches.[12]

(e) **Republic of Moldova**. The State has initiated several investigations based on media articles. In one case, the judge accepted media-based evidence in order to prosecute several companies acting to simultaneously fix prices for the retail distribution of oil.

(f) **Russian Federation**. The Federal Antimonopoly Service recently issued a notice of prohibition of activity, which may lead to declaration of a violation of a competition law, on the basis of a public proclamation made by the director general of a company (also published on the company's website), concerning the company's planning behaviour on the market.

(g) **Serbia**. The Commission for Protection of Competition has issued warnings or initiated the following cases using information obtained from various media sources: (i) using information obtained from a newspaper on the behaviour of milk producers, a procedure was initiated that ended with a decision against the largest milk producer for abusing its dominant position; (ii) after a journalist questioned a local city authority's decision regarding unique prices for taxi services for each taxi driver, a procedure was initiated; and (iii) action was taken after a newspaper reported a merger that had been completed without prior notification.

(h) **Spain**. In one case, the Comisión Nacional de la Competencia opened formal proceedings against the Spanish Association of Frozen Dough Makers (ASEMAC) after its President made statements to the press, including on pricing recommendations, that implied violations of competition law. In another case, the Comisión Nacional de la Competencia became aware through press reports of statements made by the Chair of the Tourism Board of the Confederation of Employers and Industries of Spain (CEOE) in relation to recommended price increases by hoteliers. The Comisión took into consideration the circumstances surrounding the statements, including the specific audience, position of the speaker in the sector and reaction of the sector. After investigation, the Confederation was fined €150,000.

(i) **Switzerland**. The editorial office of a television broadcast for consumers transmitted a letter containing an automaker's statement concerning the importation of commercial vehicles from Germany to Switzerland to the secretariat of the competition authority, and the authority used this letter as one of several forms of evidence in a subsequent case.

27. In the next chapter, some media types through which advocacy strategies may be effective are outlined and further case studies from survey responses are provided.

[10] Poland, Office of Competition and Consumer Protection, 2009, available at uokik.gov.pl/news.php?news_id=1081 (accessed 15 April 2014).

[11] Poland, Office of Competition and Consumer Protection, 2013, available at uokik.gov.pl/news.php?news_id=10746 (accessed 15 April 2014).

[12] Poland, Office of Competition and Consumer Protection, 2013, available at uokik.gov.pl/news.php?news_id=10571 (accessed 15 April 2014).

B. Types of media

1. Press and print

28. Press releases, interviews, conferences and print media are most often used to advocate to the public the merits of fewer regulatory choices in enhancing competition, raise awareness about an issue that is high on the agenda of a competition authority, publicize an important case of a competition authority's law enforcement activities as a way of educating the public or inform the business community about certain legal requirements, such as those concerning business acquisitions.

29. All authorities that responded to the UNCTAD survey indicated that they make use of press releases to mark events, as outlined above, and this method may be highly effective in raising awareness. For instance, the competition authority in Morocco has carried out a dozen industry studies on competition since 2009 and, on launching a report, holds a press conference to which representatives from a variety of media sources are invited, in order to ensure a wide dissemination of results. In one case, public debates ensued on a dysfunctional compensation system governing the prices of regulated goods and services, which ultimately led to a process of government-backed reform.

30. A news or press release may often be the best way to get a message across and, in order for such releases to be most effective, authorities should cultivate productive relationships with the press and relevant individual journalists. Authorities should regard themselves as sources for stories for which they have the necessary expertise, credibility and reliability, as well as timely information and broad knowledge of related issues. In Zambia, for example, authority staff have published articles in two national daily newspapers outlining the authority's mandate and the role of competition and consumer protection. Feedback has been positive, with consumers bringing complaints to the attention of the authority. In the United States of America, after advances in technology led to the use of digital dispatching applications on smartphones to bypass dispatchers when calling and paying for taxis, the Federal Trade Commission began an advocacy effort to encourage local regulatory agencies in the taxi business to avoid unwarranted regulatory restrictions on competition. Responding to rules set by local and State regulatory agencies, aimed at limiting the types of vehicles available and the ability for drivers to use smartphone applications, Commission staff made comments via press releases that emphasized the benefit to consumers of competition between traditional and new methods of delivering services. A major newspaper printed an op-ed piece by a commissioner that questioned the proposed regulations and the Director of the Commission's Office of Policy Planning was invited to give a keynote address at the annual meeting of an industry group of regulators, which was covered by representatives from industry-focused news media, in order to explain the Commission's position.

31. In some cases, it may be appropriate to issue feedback to journalists that can constructively highlight key information that may have been excluded from published stories and to provide background materials or suggest alternative or follow-up stories. For example, in order to maintain the interest of journalists on issues related to competition, the Office of Competition and Consumer Protection in Poland organizes annual competitions and presents awards for the best newspaper articles, radio broadcasts and television programmes in the field of competition and consumer protection.

32. It is important, however, to recall that journalists' goals may differ from those of a competition authority, and that this holds true across all media types. Indeed, it may be very difficult for authorities to have constructive relationships with the press, as standards of openness, fairness and transparency of the press vary greatly across countries. Outlined below are further case studies highlighted by survey respondents:

(a) **Brazil**. As competition culture in the State is relatively young, the Administrative Council for Economic Defence (CADE) used the occasion of its fiftieth anniversary to hold a series of advocacy events for Brazilian stakeholders, including publication of a book concerning the evolution of competition in Brazil, educational campaigns to highlight the importance of public policies to protect the competitive environment and the relaunch of the *Brazilian Competition Journal*. Related advertising campaigns were launched, which included the production of graphic material, publication of advertisements in major newspapers and national magazines and the launch of business-linked websites.

(b) **Bulgaria**. The Commission on Protection of Competition, observing the principle of transparency, provides ongoing information about its activities to the general public and mass media. Press releases are issued for some of the decisions adopted by the Commission, published on the Commission's official website and sent by e-mail to all major national media, including daily and weekly newspapers, magazines, television and radio channels and news agencies.

(c) **Chile**. The State's main competition policy centre was commissioned to undertake a study to evaluate the risk of trade associations in the State and concluded that there was no doubt that trade and business associations were common instruments for collusive behaviour and they often facilitated practices that increased implicit coordination among competitors, leading to less competition. Following the study, the first draft of what would become Asociaciones Gremiales y Libre Competencia, Advocacy Material Number Two, of the Fiscalía Nacional Económica was published and subjected to a public consultation process. In the National Economic Prosecutor's advocacy materials, some guidelines and recommendations on compliance with competition rules were established for business association partners. In a hostile environment, the draft generated much discussion, which continued after final publication. The authority coordinated several activities for the presentation and discussion of this material, including press conferences and seminars. Subsequently, the Prosecutor filed complaints before the Competition Tribunal against different trade associations, the largest against three poultry producers colluding in chicken meat sales to major supermarkets. Anti-trust guidelines within industries have begun to develop as a result of these advocacy efforts, requiring trade associations, such as the Chamber of Construction and the Mining Council of Chile, to conform to competition principles. Similarly, three important actors in the Chilean economy, the non-governmental organization Generación Empresarial Foundation (an entity comprised of senior managers from various companies, whose role is to oversee business ethics), Confederation of Production and Commerce, and the newspaper that had been most critical of the Prosecutor in the past, together published competition guidelines.

(d) **Croatia**. The competition authority issues an e-mail newsletter every month highlighting its activities, including important decisions made by the authority's council, new legislative changes, news of anti-trust and State aid activities, plans for future work and notices of important anti-trust and State aid cases in the European Union and worldwide. Press releases, coordinated with a specialized public relations expert, are issued for some of the decisions adopted by the authority.

(e) **Mauritius**. The competition authority has previously organized a competition week, during which the authority distributed desk calendars with cartoons depicting the ill effects of cartels and monopolies, while emphasizing the benefits of its leniency programme. These calendars reinforced, on a daily basis, the need to denounce restrictive business practices. The feedback received was very positive, especially from small and medium enterprises.

(f) **Papua New Guinea**. The competition authority has distributed pamphlets to companies considering business acquisitions, explaining the importance of applying for authorization and the associated procedures.

(g) **Poland**. The Office of Competition and Consumer Protection held a nationwide educational campaign targeted at professional market participants to raise awareness of anti-competitive agreements. The project began with a conference held in cooperation with the University of Wrocław, and a series of videos, radio broadcasts and newspaper articles were made available on the Office's website.

2. Television and radio

33. The demands of media advocacy through television and radio are quite different from those of print media.

34. One of the key differences is that the costs of television productions are much greater, so much so that this may be an insurmountable obstacle for smaller authorities. However, for authorities that can afford the costs there exist a number of advantages, including the fact that in many cases, there is no need to relay the message through a third party such as a print journalist. Also, in paying for exposure, the message of the authority is presented in the manner, at the time and to the target audience of the authority's choosing. Not all paid advertising or content may be prohibitively expensive; radio can be a relatively inexpensive way to communicate with a target audience or organization.

35. Another key difference is the time available. Television and radio journalists have very little time to present a story. Typically, television stories run between ninety seconds and three minutes and radio news items last between thirty and sixty seconds. As noted in chapter III, it is therefore important for authorities to maximize the effectiveness of their advocacy measures in this medium, preferably by pegging stories to wider events or issues. In this way, a story can be expanded to help advance the desired issue locally and nationally. Three case studies highlighted by survey respondents are outlined below.

(a) **Papua New Guinea**. The national television network has signed memorandums of understanding with the competition authority and customs concerning the ban on importing and selling hazardous products. Events and actions related to this prohibition are televised in order to show the authority's interest in addressing consumer protection issues. The authority also uses television and radio to showcase its role and function to a wider audience, both literate and illiterate. Authority staff give an overview of their work areas and answer questions on air. Consumers may freely express their views and anonymously report suspected breaches of the Independent Consumer and Competition Commission Act to the authority.

(b) **Poland**. A leniency campaign held by the Office of Competition and Consumer Protection disseminated knowledge on competition protection to entrepreneurs. Television spots promoting the leniency programme were broadcast nationwide, with a focus on business issues channels. The Office President sent information on the programme to the five hundred largest enterprises and the Office provided a special helpline through which participants in a prohibited agreement could anonymously obtain information on the programme and familiarize themselves with the procedures for applying for leniency. A subsequent campaign was launched as a consequence of an increased number of proceedings in concentration cases and insufficient knowledge of competition law in this area. Entrepreneurs were provided with a procedure for notifying their intent to concentrate and the negative impact concentrations may have on the market was clarified. The campaign consisted of a 10-episode series of television and radio programmes on concentration control, supported by resources on the Office website explaining the concentration procedure, including access to the series, the debate that launched

the campaign, and a frequently asked questions page. Interested undertakings could reach the Office via the campaign information line or e-mail address. In addition to these initiatives, the Office sent relevant materials to businesses and organizations, including guidance on the concentration procedure and a document on the market analysis conducted by the Office in cooperation with business.

(c) **Zambia**. The competition authority has used television and radio to hold public awareness campaigns regarding unfair trading practices and consumer rights and obligations in dealing with traders. Authority staff have been interviewed on both public and community television question-and-answer programmes and the public engagement and feedback received by the authority has greatly increased as a result.

3. New media

36. The world wide web is increasingly used as a way to store and update information regarding competition authorities, as social media sites such as Facebook and Twitter are used to obtain feedback from the public regarding ongoing news or hot issues. The UNCTAD survey makes clear that both developed and developing countries use social media to reach a wider audience and achieve two-way communication. Some survey respondents, such as Croatia, stated that they regard their presence on certain new media sites as their most efficient media tool to promote their competition authority's advocacy activities. Outlined below are related case studies highlighted by survey respondents:

(a) **Bulgaria**. The Commission on Protection of Competition website contains detailed information and explanations of Commission functions and activities, such as adopted decisions, annual reports and guidelines concerning different aspects of application of competition law. For instance, following a leniency programme presented as an interactive stage play at a seminar for businesses, a video recording was posted on the website.

(b) **Canada**. On the occasion of its second annual "2 Good 2 B True Day", the Competition Bureau hosted a Twitter chat focused on the two most prevalent scams. As part of Fraud Prevention Month, this social media event was presented in partnership with the Fraud Prevention Forum, for which the Competition Bureau is chair.

(c) **Egypt**. The competition authority uses social media extensively to reach the public, aiming to increase transparency and build trust. Its Facebook page hosts news and educational materials, including booklets, frequently asked questions and comics, and provides a forum for public discussions. High usage statistics demonstrate the importance of investing in social media to maintain visibility and raise public understanding of relevant issues.

(d) **Norway**. The Competition Authority participated in public debates concerning the creation of a designated law securing fixed prices on books, with the objective of preventing this law from coming into force. Through broadcast of the Authority's opinion via strategically placed media spots before the due date for submitting evidence to the hearing and placement of supporting material on its website, the Authority's view set the agenda for discussions and was the favoured participant in debates and interviews. Although the law was adopted, the Authority's opinion still remains in the public debate.

(e) **Russian Federation**. The Federal Antimonopoly Service website has been designed to present the most recent proceedings and decisions and the main competition advocacy initiatives, as well as comments made in the media on authority actions. The Service supports one website devoted to tenders for the development of State property and a separate anti-cartel website that provides information on the nature of cartels, the threats they pose and how citizens can contribute to disclosures. The Service also has a social

media presence on Facebook and Twitter, where new releases are posted and comments and feedback solicited from the general public on the authority's work. In 2010, a dedicated Facebook page called FAS-book was launched, to serve as an effective group communication with representatives of the competition authority in an informal setting. In practice, these social networks are becoming a virtual alternative for the reception rooms used by the Service, where complaints are filed, proposals made and public discussions carried out.

(f) **United States**. The Federal Trade Commission publishes online a series of illustrated dialogues aimed at older children explaining and illustrating real life applications of competition and consumer protection principles in the form of an interactive trip through a shopping mall. The following topics are covered: advertisements, security, modelling frauds, deceptive jobs, miracle projects, lotteries and competitions, competition, supply and demand, mergers and history of American competition law. Another visual aid that is often used in training sessions on competition advocacy is a video devoted to the first successfully completed international cartel case of the American competition authority for price fixing of the animal feed additive lysine, which led to sanctions and three prison sentences.[13]

(g) **United Kingdom of Great Britain and Northern Ireland**. The Office of Fair Trading[14] had a Twitter account administered by an intra-institutional group representing all employees of the Office. The Office tweeted approximately once per day, including invitations for feedback on certain issues undergoing consultations by the Office and messages regarding new authority information online, such as news, publications, YouTube videos, speeches and campaigns. The Office was unable to provide individual replies. However, all suggestions and new topics received from Twitter users were disseminated to the respective Office employees.

IV. Measuring the effects of a media-based communication strategy

37. Measuring the effectiveness of any media-based communication campaign may not always be a simple process. Media advocacy can be a key part of an overall strategy but does not stand alone and is not a complete strategy in itself. As well, media should be used as an advocacy tool only in the context of other approaches, such as law enforcement, coalition building and policy advocacy. The complexities of each economic and political landscape make isolating media advocacy's contribution difficult; policy battles can take years and include contributions from various stakeholders. At a simple level, authorities may wish to track the basic outcomes associated with a chosen issue, including whether the issue was on the public agenda, awareness of the issue was raised and advocacy put pressure on and mobilized key decision makers, as well as whether the policy was enacted or the intended change occurred.

38. There are a number of measures that may be used to assess the outcomes of media advocacy activities. For instance, the degree to which an issue appeared on the media agenda can be measured by the amount of coverage generated, while the placement of the coverage and whether the issue was framed from a public policy perspective can be

[13] Federal Trade Commission, 2009, Lysine Cartel, available at http://www.youtube.com/watch?v=wDH0Rv8R0SQ (accessed 15 April 2014).

[14] The Office of Fair Trading closed on 31 March 2014 after the UNCTAD survey was conducted, and its work has passed to a number of different bodies.

assessed through a content analysis. Whether media coverage advanced policy can be assessed by, for example, monitoring the progress of legislation and interviews with key advocates and decision makers. Evaluators can examine key documents, such as minutes of parliamentary or local council meetings, and conduct interviews with decision makers or journalists to help determine whether media coverage successfully applied pressure that helped mobilize action. Stakeholder polling is often an effective way to ascertain whether the issue reached prominence among certain groups, although polling on a large-scale basis can be costly and may not be an option for smaller authorities.

39. Despite the difficulties associated with media advocacy evaluation, it is important that authorities carry out this process. As authorities often have limited budgets and resources, it is important for media advocacy activities to be as effective as possible, both in terms of impact and cost. As outlined in the previous chapters in this note, this is especially important in jurisdictions within developing countries. For example, the competition authority in Mauritius embarked on a nationwide media advocacy campaign that included simultaneous advertising through radio, on billboards and in the press. At the end of the campaign, the authority noted a substantial increase in feedback and complaints by the public, but many did not fall under the competition act and often concerned consumer protection issues instead.

40. It is also important for the evaluation process to highlight media advocacy as a key part of an overall strategy and to note that it does not stand alone. The effectiveness of media advocacy may be limited by constraints within other operational areas of the authority. For example, Indonesian news coverage indicates that the Commission for the Supervision of Business Competition is effective in framing messages and speaking directly to targets. One major Jakarta newspaper provides front-page coverage, and local television news runs related stories used as teasers for main programmes. However, the Commission does not have the capacity to follow up on attention generated by widespread media coverage. Therefore, valuable opportunities for advancing public policy may be lost.

41. In response to the UNCTAD survey, a number of institutions (e.g. in Serbia), stated that they did not currently carry out evaluations of the effectiveness of media-based advocacy activities, while others (e.g. the European Union) noted that they did not have specific techniques for evaluating the effectiveness of media-based advocacy activities and still others (e.g. Malta) only evaluated media coverage following specific events.

42. A number of competition authorities (e.g. in Jordan, Malaysia, Mauritius and Morocco) keep records of the number of complaints they receive and assess the impact of advocacy. Some respondents (e.g. Botswana, Chile, Egypt and Indonesia) indicated that they have conducted wide-ranging surveys of perceptions of the effectiveness of the authority, including on the usefulness of previously published studies and guides. In order to evaluate their media advocacy activities, some authorities (e.g. in Guyana and Spain) rely on feedback received through close relationships with key stakeholders and constituents, such as in public administration, the private sector, academia, law firms and the press and among consumers, while others (e.g. in Suriname) take measures through levels of interaction and responses from activity participants or website usage. Some authorities (e.g. Serbia) expressed their intentions to put in place the relevant mechanisms for evaluation. Two further examples are as follows:

(a) **Denmark**. The Danish Competition and Consumer Authority evaluated the effect of a 2013 campaign on the introduction of imprisonment in cartel cases, asking a number of competition lawyers and members of trade organizations whether the campaign resulted in better awareness of the competition rules. All respondents answered positively.

(b) **United Kingdom**. The Office of Fair Trading evaluated competition advocacy interventions on the basis of a specifically designed methodology. Part of the

impact was measured quantitatively through the effect of competition advocacy on prices. Due to the fact that regulation could lead to an increase in prices, the price in conditions of anti-competitive regulation and the price in conditions of competitive regulation were compared, as well as the price in conditions where there was a lack of any regulation. The benefits for consumers could be summarized in two main areas: lower prices and increased consumption as a result of lower prices. For a precise calculation of the effect, information was needed about the elasticity of demand in order to determine what the decrease in consumption would be if prices were increased. Outcomes of competition advocacy were also reflected in non-price effects, such as improved product qualities or delivery processes, but were more difficult to measure.

43. Many other respondents indicated that they take a more formal approach to evaluation. The authorities in both Brazil and the Czech Republic, for instance, have specialized units for evaluating the effectiveness of media-based advocacy activities, and the Czech Republic employs a specialized company to conduct an annual analysis of media coverage of the authority and its activities. In Colombia, the authority works with an advertising agency that reports on the coverage of its media advocacy campaigns and also has a media company that provides monthly updates and saves resources through the use of free press. All measurement tools are reported to senior management and allow for improved decision-making. The Public Relations Department of the Federal Antimonopoly Service of the Russian Federation monitors mass media on a daily basis for mentions of the Service, citing the importance of knowing public reaction to any message, case decision or suggestion on the development of product markets made by the authority. The Swedish Competition Authority also compiles media and business intelligence on a daily basis, and the Director General is provided with weekly presentations that assess, both qualitatively and to some extent quantitatively, the media impact of activities. The Authority places special emphasis on editorial and opinion articles or statements by politicians and leading figures within trade unions and organizations. Two further case studies are as follows:

(a) **Poland**. The Office of Competition and Consumer Protection evaluates the effectiveness of its activities by monitoring statistics via the world wide web and data concerning website visits, following the numbers of press releases on a given issue and, in certain cases, by commissioning social research, such as to learn the extent of knowledge among undertakings in Poland of the leniency programme, of competition law and of the principles of granting State aid.

(b) **Ukraine**. The press office of the Antimonopoly Committee uses an e-mail sender to distribute news highlighted on the official website to newspapers, magazines, other print media, television and radio stations, news agencies, non-governmental organizations and associations whose activities are connected with the Committee, and regional, district and local media, in order to reach the widest possible audience.

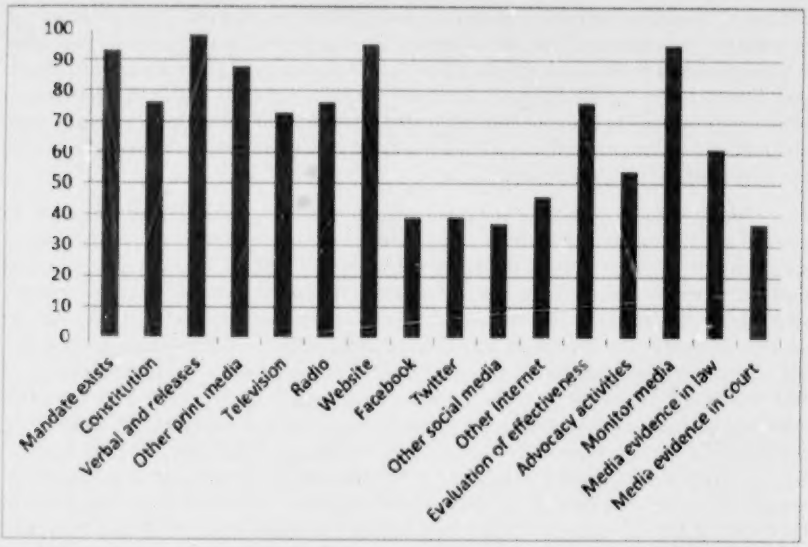
44. The types of monitoring in the case studies above allow for authorities to take into account the opinion of mass media and business and keep a close watch on negative publications in mass media and react accordingly.

V. UNCTAD survey on practices in competition advocacy and the media

45. This chapter presents a brief summary of the 43 responses received from competition authorities to the UNCTAD survey.

46. Figure 1 demonstrates that on average over 90 per cent of respondents have an advocacy mandate, use press conferences and releases for communication via media, host a website for advocacy and monitor media to detect breaches of competition law.

Figure 1
Competition advocacy and the media
(Percentage of positive responses)



Note: Mandate exists refers to authorities that have a mandate on advocacy; Constitution refers to authorities that have a mandate enshrined in their constitution; Verbal and releases refers to authorities that use interviews, press releases and conferences; Other print media refers to authorities that use other print media; Television, Radio, Website, Facebook, Twitter and Other social media refer to whether authorities use such media as part of a communication strategy; Other Internet refers to authorities that use other web-based sources; Evaluation of effectiveness refers to authorities that evaluate the effectiveness of their advocacy activities; Monitor media refers to authorities that monitor media for breaches of competition law; Media evidence in law refers to authorities whose jurisdictions' laws permit the use of evidence found in the media; and Media evidence in court refers to authorities that have used evidence found in the media in court.

47. A significant majority of respondents (70–80 per cent) have a constitutional mandate for advocacy, use television and radio for advocacy campaigns and have mechanisms for evaluating media advocacy activities. Social media are less widely employed; 30–40 per cent of competition authorities use social media including Facebook, Twitter and other sites. In approximately two-thirds of jurisdictions (60 per cent) the law allows for the use of evidence found in the media and around one-third of respondents (37 per cent) have used media evidence in court proceedings.

48. Approximately half of the respondents (53 per cent) were aware of their budget allocations for advocacy activities and on average, this allocation is relatively low, with a median of 3.7 per cent for overall advocacy and a median of 1.2 per cent specifically for media advocacy activities. There is large regional variation in the median budget share dedicated to advocacy: 3 per cent in Africa, 8 per cent in South and Central America, and 5.5 per cent in States of the Organization for Economic Cooperation and Development. Little variation was exhibited in budget allocations for media-based advocacy; the median of reported shares was below 1.5 per cent in the four reporting regions.

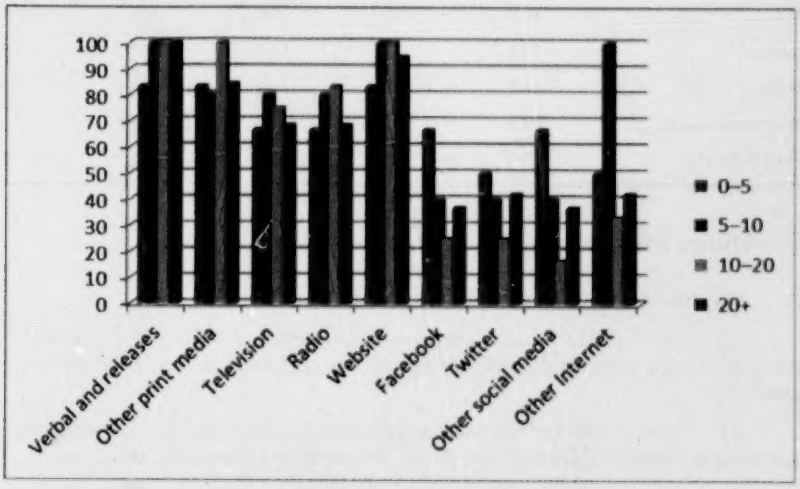
49. Figure 2 shows that concerning "old" media and website use, all competition authorities follow a similar pattern, regardless of age: more than 80 per cent use press and print media and host a website, while 65–80 per cent utilize television and radio for campaigns. However, in terms of social media, 50–65 per cent of young agency

respondents indicated use of Facebook, Twitter or other social media sites. This was far in excess of positive responses from older and mature authorities and may indicate that social media use is more appealing for younger authorities, which may be under pressure both to rapidly increase authority recognition and to secure resources as and efficiently and cost-effectively as possible. Interestingly, there appears to be a relative lack of use of social media (10–30 per cent) by maturing authorities (10–20 years) in comparison to both older and younger authorities.

Figure 2

Use of media advocacy by authority age

(Percentage by authority age)



50. The table below shows the regional profile of respondents with respect to the use of media for advocacy. It may be seen that press activities and television are used by almost all authorities, regardless of region. Radio is highly used in Asia and the Pacific (100 per cent), Africa (88.9 per cent) and Western Europe and North America (75 per cent), but much less among transition economies of Europe and Central and South America (58.3 per cent and 62.5 per cent respectively). Regarding social media, authority usage rates are largely significantly lower than 40 per cent, with the exception of respondents from Africa who widely use Facebook (77.8 per cent) and Twitter (66.7 per cent). This may support the suggestion that new social media could become an alternative to more expensive traditional media in terms of coverage and access, particularly among young or less endowed authorities.

Relative use of media for advocacy by region

	Africa	*Central and South America*	*Asia and the Pacific*	*Transition economies of Europe*	*Western Europe and North America*
Interviews, press releases, conferences	88.9	100	100	100	100
Other print media	66.7	100	100	83.3	87.5
Television	88.9	100	100	100	100
Radio	88.9	62.5	100	58.3	75
Website	88.9	100	100	100	87.5
Facebook	77.8	25	33.3	16.7	37.5
Twitter	66.7	25	16.7	33.3	37.5
Other social media	44.4	25	50	25	37.5
Other Internet	55.6	50	33.3	25	75

VI. Questions for discussion

51. Suggested questions for discussion include the following:

(a) How should young competition authorities develop media advocacy strategies? Should criteria be established to prioritize sectors of interest when allocating resources?

(b) What lessons can late adopters of competition law learn from countries with established competition cultures? What should the adaptation process take into account?

(c) What capacity-building assistance should be given to stakeholders for effective media advocacy?

(d) Where media and political freedom is an issue, how should competition advocacy be handled?

(e) What would be the best modalities of international cooperation in advocacy in general and with respect to media in particular?

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Informal cooperation among competition agencies in specific cases

Note by the UNCTAD secretariat

Executive summary

This report reviews existing informal cooperation arrangements, mechanisms and networks as well as the role they can play in the enforcement of competition law, particularly for young competition agencies in different jurisdictions. The report focuses on informal cooperation, including recent development and specific cases by region, and provides insights into future trends in regional and international cooperation.

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Introduction

1. As part of the ongoing UNCTAD project on international cooperation in competition policy, the Intergovernmental Group of Experts on Competition Law and Policy, in its thirteenth session which was held from 8 to 10 July 2013, requested the UNCTAD secretariat to prepare a report on informal cooperation on specific cases among competition agencies.

2. Previous UNCTAD reports on international cooperation have stressed informal cooperation among competition authorities as a tool for effective enforcement of competition laws. Along with leniency programmes, informal cooperation may be a valuable asset in the portfolio of tools available for the enforcement of competition law.[1] Experience also shows that even in situations where competition agencies have formal agreements with each other, informal exchange of ideas and developments on past cases, as well as possible areas where competition concerns may arise, is common.

3. Cooperation is a key ingredient to effective enforcement of competition law. It allows agencies to augment resources, reduce costs of regional studies, enhance training and promote mutual understanding of competition regimes, thereby contributing to building trust. However, the nature of antitrust and merger control poses serious challenges for competition authorities. These challenges include the legislative and structural architecture of formal cooperation agreements; lack of coherence between national and regional frameworks; information access bottlenecks, especially in developing countries; resources constraints; and timing and procedural issues (UNCTAD, 2013).

4. A recent survey conducted by the Organization for Economic Cooperation and Development (OECD) identified the following constraints and limitations of formal cooperation in competition cases (OECD, 2013):

(a) Limitations on confidential information sharing;

(b) Limitations caused by differences in legal frameworks in relation to criminal and civil enforcement;

(c) Institutional and investigatory impediments: resource constraints and practical difficulties;

(d) Jurisdictional constraints: differences in legal standards;

(e) Lack of trust and confidence in legal systems.

5. The OECD survey also reports that the bulk of international cooperation takes place among developed competition agencies, with an emerging pattern of informal cooperation among young competition agencies.

6. This report reviews the challenges faced by young competition agencies in dealing with both domestic and cross-border anticompetitive cases and in putting in place effective cooperation mechanisms. Developed and developing competition agencies alike have been seeking ways and means of enhancing the process of enforcement cooperation and the sharing of best practices. This report focuses on the emergence and proliferation of informal cooperation, draws on recent research and international reports, for instance

[1] For instance, when Brazilian Government authorities were confronted with the same problem in their investigations into the vitamin cartel, Canada's informal cooperation offered leads on what exactly to investigate, thus demonstrating the effectiveness of informal networks.

UNCTAD background studies for the eleventh (2011), twelfth (2012) and thirteenth (2013) sessions of the Intergovernmental Group of Experts on Competition Law and Policy, among others, and ongoing and past work published by the main organizations dealing with the subject, such as the European Union, the International Competition Network (ICN), OECD and academia. The report also draws from the UNCTAD Questionnaire to Competition Agencies (2013–2014).[2]

I. Framing the issue

A. What is informal cooperation?

7. Cooperation is defined as a "situation in which people work together to do something".[3] Within the present report, the working definition of informal cooperation takes into account general and informal cooperation applied to institutional activities of competition authorities. Cooperation refers to collaboration between competition authorities aimed at creating synergies as well as partnerships for mutual assistance and reciprocity in enforcing their respective competition rules.

8. Cooperation in cross-border anticompetitive cases falls into two categories: formal and informal. Although informal cooperation is a continuous process and can take place in many settings, this report will focus on informal cooperation mechanisms between competition agencies. In this regard, informal cooperation is defined as unofficial, casual, daily, friendly and unconstrained collaboration between competition agencies.

9. The report covers informal cooperation taking place outside the established legal arrangements as described in formal bilateral and regional trade agreements (RTAs). However, it also reviews informal cooperation that takes place within the framework of formal agreements to a certain extent. Responses to the UNCTAD questionnaire cited the example of close cooperation in a merger case[4] between the German competition authority and competition authorities from Asia and Europe that led to the withdrawal of a merger notification.

B. Complementarities and limitations of formal and informal cooperation

10. As explained in TD/B/COM.2/CLP/21/Rev.5, paragraph 23 below, the exchange of confidential information is a limitation of both formal and informal cooperation agreements:

> The maintenance of informal links with other competition authorities has been an important way of keeping informed of developments in competition law and policy in other jurisdictions through the exchanging of views, although the usefulness of such informal cooperation has sometimes been found to be limited in cases where an authority requires enforcement assistance in a particular matter, or confidential information.

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[2] The following respondents answered the UNCTAD questionnaire: Barbados Bhutan, Brazil, Chile, Colombia, Croatia, Egypt, the European Union, Germany, India, Japan, Kenya, Malta, the Republic of Moldova, Namibia, Peru, Switzerland, Turkey, Uruguay, the United States of America and Zimbabwe.

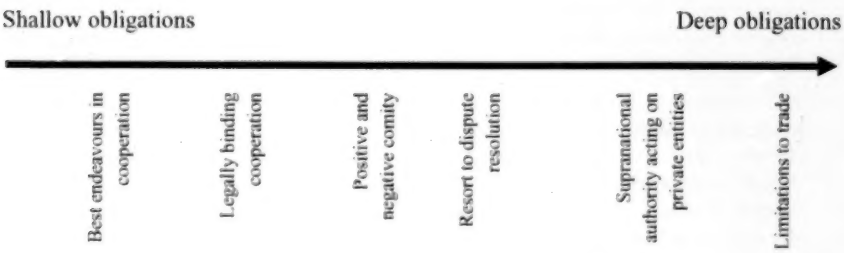
[3] See http://www.learnersdictionary.com/definition/cooperation (accessed 22 April 2014).

[4] See the BHP/RIO Tinto case at http://ec.europa.eu/comm/competition/mergers/cases/index/m99.html#m_4985 (accessed 22 April 2014).

11. While the conclusion of bilateral enforcement cooperation agreements is necessary for full cooperation to take place, enforcement cooperation might initially take place on an informal basis. Useful information may be exchanged informally as well as through most bilateral cooperation instruments (with the exception of mutual legal assistance treaties and agreements relating to the International Antitrust Enforcement Assistance Act, such as the one concluded between the United States and Australia). Cooperation would be facilitated by the initiation of informal discussions and exchanges of general information, including within the framework of any bilateral agreements or RTAs (see figure and table 1) to which the countries concerned may be party.

12. Despite the proliferation of formal agreements observed over the last two decades, an UNCTAD study underlines that implementation has been slow, especially in developing countries. Trade and competition negotiators might have been "eager to ink" but not ready to act (UNCTAD, 2005). Formal cooperation agreements come with legal and institutional requirements that must be fulfilled in order to operate. They come in what is called "hard law", with rules, regulations and dispute-settlement mechanisms. These may take years to put in place, which is true of many RTAs in Africa, Latin America and other parts of the world. The pace has been extremely slow and their effectiveness can be queried.

The spectrum of competition provisions in regional trade agreements



Source: UNCTAD, 2005, Executive summary.

Note: This is illustrative only: Actual positioning would depend upon specific wording in the agreements.

13. Within regional or subregional groupings, political will or relative uniformity of economic development and culture may make it easier to build mutual trust and perception of common interests, which may be viewed within the context of the overall relationship rather than solely in terms of competition law and policy. Enforcement cooperation among developing countries with limited experience in this area, but facing similar circumstances, may also be of a more balanced nature than cooperation with countries with more experience in this area and would also constitute a learning experience, ensuring that cooperation with more advanced partners is fruitful.

14. With few exceptions,[5] most countries prohibit their competition agencies from sharing confidential information obtained in the course of an investigation. While

[5] Australia has a statute under which confidential information can be shared with foreign competition agencies for use in civil cases (Mutual Assistance in Business Regulation Act 1992). The Canadian

protecting the rights of the parties, this also limits the degree of cooperation among competition agencies. Public dissemination of such information could prove harmful to the firm that provided it, to the future information-gathering efforts of the agency and to consumer welfare. The cooperation challenges facing competition agencies is how to promote better understanding of each other's laws and ensure effective enforcement, while protecting legitimate private and public interests.

Table 1

Number of regional trade agreements that contain competition clauses involving developing countries signed with the European Commission or the United States

	European Commission		*United States*		*Developing countries*	
	Number	*%*	*Number*	*%*	*Number*	*%*
Number of regional trade agreements with developing countries containing competition provisions notified to the World Trade Organization	8	72	3	75	24	46
Total number of known regional trade agreements with developing countries notified to the World Trade Organization	11	100	4	100	52	100

Source: UNCTAD, 2005, chapter 4, Lessons from the negotiation and enforcement of competition provisions in South–South and North–South RTAs, p. 129.

15. However, informal case-specific cooperation could actually involve the exchange of intelligence and agency information related to the know-how in case approach, the different strategies used, the way to define better the relevant market and other items that cannot be referred to as such in formal cooperation agreements. Informal cooperation will come to a halt when both agencies receive the companies' authorization to cooperate formally. That would mean that the competition authorities depend on the consent of a third party.

C. Types of informal cooperation arrangements

16. UNCTAD 2013 identified certain types of informal cooperation arrangements.[6] In informal cooperation, there are instruments for case-specific cooperation mechanisms, while others are general in nature. Some national competition authorities have developed informal networking relationships and have built a level of trust, where competition officials can request case information by telephone without basing it on formal agreements. Networking forums are also emerging in many regions, such as, the Euro Mediterranean Competition Network and the African Competition Forum. For the purposes of this study, two elements of informal cooperation have been differentiated: general informal

competition authorities have conducted a consultation process on a legislative proposal that includes an amendment to permit the sharing of confidential information in some circumstances.

[6] (a) Informal cooperation based on the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (1980); (b) informal cooperation based on the 1995 Recommendation of the Council concerning Cooperation between Member Countries on Anticompetitive Practices affecting International Trade, commonly known as the 1995 OECD Recommendation on Cooperation, or other similar soft-law instruments with no particular legal basis; (c) cooperation based on waivers; (d) cooperation based on provisions in national law; (e) cooperation based on non-competition-specific agreements and instruments; (f) cooperation based on competition-specific agreements; (g) regional cooperation instruments.

cooperation arrangements and case-specific informal cooperation mechanisms. These are described below:

(a) General informal cooperation can take place in conferences, bilateral meetings and other forms of exchange of knowledge and information that can be shared between competition experts in the course of their deliberations. Also, capacity-building and technical assistance cooperation may provide the platform where beneficiary countries can get together and promote common objectives. In this regard, UNCTAD, OECD and ICN are engaged in this type of informal cooperation through their contributions to multilateral, regional and bilateral meetings.

(b) Case-specific informal cooperation could include discussion of investigation strategies, market information and witness evaluations. It would also entail sharing leads and comparing authority approaches to common cases. This form of cooperation can help young competition authorities in particular to streamline an investigative strategy and focus an investigation.

17. While these two informal cooperation mechanisms cover all types of anticompetitive behaviour (cartel, abuse of dominance and mergers), different approaches to informal cooperation arrangements are being used in cartel and merger cases. Information sharing in cartel cases is more limited due to the nature of its content and the fear that it might be used against the parties concerned. In merger cases, information is readily shared because in many instances such information is not likely to be utilized to the detriment of the parties concerned.

18. Cooperation on anticompetitive practices affecting more than one country are among the international measures provided for in the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, negotiated under the auspices of UNCTAD. The OECD Recommendation on Merger Review (2005) also stresses the importance of cooperation and coordination in reviewing transnational mergers.

19. Working together by collecting and sharing information specific to cross-border competition cases and exchanging views on appropriate methodologies, approaches and remedies in such cases are alternative ways in which informal cooperation has been deepened between competition agencies of developing and developed countries; informal cooperation can also facilitate the work of agencies and reduce business costs.

20. One of the objectives of the UNCTAD advisory services to young competition agencies is to provide capacity-building in case-specific informal cooperation exchanges, which in many cases is critical for enforcing competition laws in a fair and transparent manner. UNCTAD prioritizes activities that promote mutual understanding and contribute to building trust to enhance informal cooperation arrangements.

21. Both types of informal cooperation mentioned above have proved to be of increasing importance in the last decade, especially in regions where formal agreements exist but have not yet been enforced or where they do not yet exist. In cases where procedures are little formalized, it leaves room for greater flexibility in designing the mode of cooperation and its implementation.

22. UNCTAD voluntary peer reviews have also contributed to informal cooperation efforts among competition agencies, including cross-pollination between young and mature competition agencies. An appreciated feature of the UNCTAD voluntary peer reviews is the assessment of regional competition arrangements such as the West African Economic and Monetary Union (WAEMU) and its member States, and the tripartite peer review for the United Republic of Tanzania, Zambia and Zimbabwe within the Southern African Development Community (SADC) and the Association of Southeast Asian Nations (ASEAN) (Indonesia and the Philippines). The two peer review reports (WAEMU and

comparative assessment report for the tripartite peer review), their respective recommendations and the follow-up capacity-building activities highlight appropriate areas where inter-agency cooperation can be most useful for reforms and the adoption of best practices.

II. Review of specific cases by region

23. Responses to the UNCTAD questionnaire indicate that informal cooperation between competition agencies has been taking place in many jurisdictions across the globe. The table below shows informal cooperation efforts by region based on the countries that responded to the questionnaire. It is essential to note that the analysis does not illustrate a regional dimension of informal cooperation.

Table 2
Informal cooperation by region

Region	*Regional cooperation (percentage)*
Africa	100
Americas	86
Asia	67
Europe	86

Source: Response to the UNCTAD Questionnaire to Competition Agencies (2013–2014).

24. The following section is a review of specific cases classified by region and type of anticompetitive practice (cartel or anticompetitive mergers) and provides a summary of the informal cooperation activities of member States beyond their participation and engagement in worldwide networks such as OECD and ICN.

A. Africa

Informal cooperation in merger cases

25. Based on the responses to the UNCTAD questionnaire, many of the cases relate to merger control. The case of Zimbabwe exemplifies cooperation mostly with the competition authority of Zambia. In two examples of merger transactions notified separately to the two authorities, they exchanged information during case examination involving major soft-drink companies[7] and tobacco companies.[8] This exchange of information enabled the two competition authorities to make well-informed determinations on the transactions. Moreover, Zimbabwe and Zambia collaborated informally while assessing the takeover of a South African company by an Indian company.[9]

26. This cooperation is clearly case specific and took place under the umbrella of the Common Market for Eastern and Southern Africa. The COMESA Treaty has one of the most comprehensive competition-related provisions and corresponding institutional

[7] Coca-Cola and Cadbury-Schweppes merger. See http://www.apeccp.org.tw/doc/Australia/Case/aucas16.htm (accessed 25 April 2014).

[8] Rothmans of Pell-Mall and British American Tobacco merger. See siteresources.worldbank.org/INTCOMPLEGALDB/.../AlexKukuba.pd ((accessed 25 April 2014).

[9] Cipla Medpro South Africa (Pty) Limited and Cipla India case. See www.mcser.org/journal/index.php/mjss/article/viewFile/1980/1979 (accessed 25 April 2014).

framework.[10] As the COMESA Competition Commission develops its case work load, it can be expected that informal cooperation will take place between its member States based on the provisions of the COMESA Treaty and the Competition Rules and Regulations.

27. Zimbabwe's questionnaire response indicates that it has also been working informally with other countries such as Burundi, Comoros, the Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan and Swaziland.

28. This shows that informal cooperation is increasingly becoming an integral part of competition enforcement in the COMESA region, with more established competition agencies taking the lead.

Informal cooperation on ex-post enforcement activities

29. Zimbabwe has recently received valuable market structure information on the bread cartel case (from the Competition Commission of South Africa), the public utilities (electricity) monopolization case (competition authorities of Botswana, Zambia, and Namibia), and the molasses abuse of dominance case (competition authorities of South Africa, Namibia and Zambia). It has also supplied information on investigations carried out by the Zambian Competition and Consumer Protection Commission on the cement and motor industries.

30. Two factors are considered to hamper enforcement of competition laws in WAEMU: first, the psychological difficulty to accept the court's opinion rendering exclusive competence to the WAEMU Commission, and, second, the need to adapt national legislations to regional rules (UNCTAD, 2013). UNCTAD is implementing a three-year technical assistance project with the WAEMU Commission to address these issues and facilitate cooperation and exchange of information.

31. In SADC, work on informal cooperation among competition agencies has been initiated under the Competition and Consumer Policies Committee, which promotes consultations and cooperation on competition and consumer protection issues. Further, an online data bank was established in 2012 to facilitate the exchange of non-confidential information on ongoing and closed competition cases. Member States have posted summaries of specific cases, but there is no provision for reporting instances of informal cooperation.

32. However, the South African Competition Commission has been making efforts to involve other SADC member States in recent cartel cases concerning the fertilizer, maize seed and construction industries, among others. Various factors have hindered the extent to which countries can engage in informal cooperation in the region, for examples, differences in legal frameworks, which do not provide for adequate powers to organize dawn raids, or the absence of leniency programmes or provisions on the exchange of information on cartel cases. The same applies to merger cases where different and sometimes conflicting remedies designed by different agencies make harmonization and cooperation difficult.

B. Asia

33. In East and South-East Asia, the ASEAN Free Trade Area and the Asia–Pacific Economic Cooperation (APEC) forum do not include competition provisions in trade

[10] See UNCTAD, 2005, chapter 11, Allocation of competences between national and regional competition authorities: The case for COMESA. See also UNCTAD 2008 and 2011a

agreements; therefore, informal cooperation at the regional level is not possible. However, APEC is very active in the area of competition and in 1996 established the Competition Policy and Deregulation Group – now called the Competition Policy and Law Group – to improve the region's competitive environment and develop an understanding of regional competition laws and policies. Training courses and experience sharing are examples of APEC activities and can be considered general informal cooperation.

34. Another regional forum in East Asia is the East Asia Top-Level Officials' Meeting on Competition Policy. Nine annual meetings have been held since 2005; the latest was held in Manila in August 2013. This forum aims to build a network among competition agencies in East Asia by sharing views and perspectives on competition policy, with attendance of the top-level officials from these agencies. The forum discusses the challenges faced by these officials when enforcing competition law in their respective jurisdictions and future technical assistance strategy to be developed among them. Although it lacks the functions of a cooperation mechanism, general informal cooperation is taking place indeed, and agencies are increasingly taking part in this forum every year. Case-specific informal cooperation has not yet been envisaged in this forum, but perhaps a trust-building exercise would advisable to lay the groundwork for informal cooperation in the East Asia subregion.

C. Countries of the Commonwealth of Independent States

35. The Interstate Council for Antimonopoly Policy (ICAP) of the Commonwealth of Independent States (CIS) has been the basic formal platform for interaction of the antimonopoly authorities of those States for the past 20 years. It was established in 1993[11] to coordinate the formulation of the legal and organizational basis for the enforcement of competition law in CIS countries. This was aimed at the prevention, restriction and suppression of anticompetitive practices and unfair competition within the CIS Common Economic Zone.

36. According to the Russian competition authority, ICAP has made several achievements. It has reduced the number of antimonopoly law infringements on the international markets of the CIS countries, developed competition both in the domestic markets and in external economic activities, and eliminated barriers in the movement of goods and services within the CIS Common Economic Zone. Its work has reached a new qualitative level. To increase the interaction between the antimonopoly authorities of the CIS countries, ICAP participants decided to conduct joint investigations of anticompetitive practices in CIS international markets such as air transportation.

37. The competition authorities of Belarus, Kazakhstan and the Russian Federation, members of the Eurasian Economic Community, are engaged in formal and informal cooperation mechanisms such as the adoption of a model law for competition in July 2013 as part of the Agreement on Common Principles and Rules of Competition of 9 December 2010. The implementation of this model law, a legislative act of an advisory nature, will be a benchmark for the legislative work in competition policy in these three largest CIS countries. The UNCTAD secretariat has been actively involved and is fully committed to

[11] ICAP includes representatives of 10 CIS member States: Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, the Republic of Moldova, the Russian Federation, Tajikistan, Uzbekistan and Ukraine. See the Treaty on Implementation of the Coordinated Antimonopoly Policy (23 December1993) and the new Treaty on Implementation of the Coordinated Antimonopoly Policy signed at the meeting of the Council of the Heads of the CIS Governments in Moscow on 25 January 2000.

this work. The Russian Federation and Kazakhstan were engaged in informal cooperation in dealing with cases in the mobile telephone services market.[12]

38. Armenia, the Republic of Moldova and Ukraine have observer status within the Eurasian Economic Community. The Competition Council of the Republic of Moldova is part of ICAP and the Central European Free Trade Agreement. The Moldovan competition authority works closely with ICAP, which allowed the authority to launch a common market investigation in the food retail industry, petrol products and the pharmaceutical industry.

39. In addition, the Moldovan competition authority was involved in case-specific informal cooperation arrangements in a recent case related to Green Card Car Insurance, in which it requested the expertise of the Austrian competition authority. Another case was an alleged violation of the midstream and downstream petrol market, where the Moldovan competition authority and the Russian Federation worked together. Finally, the Moldovan competition authority requested and received the expertise from its Romanian counterpart on the alleged abuse of a dominant position of a Moldovan enterprise. Overall, informal cooperation has helped the Competition Council of the Republic of Moldova deal with competition cases.

40. The Federal Antimonopoly Service (FAS) of the Russian Federation is actively involved in informal cooperation forums such as the Working Group for Research on Competition Issues in the Pharmaceutical Sector, which was set up in January 2012 on the initiative of FAS and the Italian competition authority. Another informal setting is the International Working Group on Investigating Issues on Pricing at the Oil Product Markets and Methods of Their Functioning which was established on the initiative of FAS and the Austrian competition authority in October 2011.

41. With regard to case-specific informal cooperation, FAS reported consultations with foreign competition authorities while investigating international cartel cases, especially with the competition authorities of Norway and Viet Nam.[13] Consultations were also held with the Directorate-General for Competition of the European Commission on case investigations of the markets of pharmaceutical products and automobiles. Recently, FAS and the Directorate-General for Competition initiated a joint investigation on the ocean- and sea-borne container liner shipping case. During this investigation, the two parties held joint consultations.[14]

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[12] In early 2010, the antimonopoly bodies of Kazakhstan and the Russian Federation launched investigations on roaming services. The investigations were completed in October 2010. Based on the findings, FAS determined that MTS OJSC, VympelCom OJSC, and MegaFon OJSC had abused their market dominance, and the Agency for Competition Protection of Kazakhstan arrived at the same conclusions with regard to GSM Kazakhstan LLP, Kazakhtelecom OJSC, Mobile Telecom-Service LLP, and KaR-Tel LLP.

[13] In a similar fish cartel case concerning the supply of pangasius from Viet Nam to the Russian market, FAS carried out an investigation with the active support of the competition authority of Viet Nam. The case was initiated against a number of Russian companies, and the Association of Production and Trade Enterprises of the Fish Market, a non-commercial organization, prohibited the coordination of economic activities by market agents. FAS suspects that the Association coordinated such activities of economic entities – competitors, dividing up the pangasius market between themselves.

[14] Response of the Russian Federation to the UNCTAD questionnaire.

D. Latin America and the Caribbean

42. In Latin America, formal subregional groupings (the Andean Community, the Central American Competition Network and MERCOSUR) have created informal cooperation systems between their respective members. However, a number of factors within these subregional groupings hinder the potential of informal cooperation. The Latin American Competition Forum, the Inter-American Competition Alliance[15] and the Regional Competition Centre for Latin America have been instrumental in enhancing informal cooperation efforts.

43. The UNCTAD programme, Competition and Consumer Protection for Latin America (COMPAL), is the only regional network composed of competition and consumer protection authorities in the region. It has contributed extensively to building the foundations for all types of cooperation between its members since 2003. In addition, the Latin American Working Group on Trade and Competition, the Latin American and Caribbean Economic System and UNCTAD contribute to strengthening institutions by sharing knowledge and promoting regional consultations.

44. Within the Caribbean Community (CARICOM), the Treaty of Chaguaramas incorporated competition provisions to create a competition culture and contribute to the growth of CARICOM States under a single-market arrangement. Under this umbrella, formal and informal cooperation take place regularly between its members and with the CARICOM Competition Commission when handling cross-border anticompetitive practices within the Community. However, CARICOM law presents some challenges related to the differences between the legal systems of CARICOM member States and the allocation of competences between itself, the Council for Trade and Economic Development, the Caribbean Court of Justice and national competition authorities.

45. The Barbados competition authority, the Fair Trading Commission, is an active participant in ICN, which fosters and builds informal cooperation mechanisms for its members. Barbados also reported its commitment to CARICOM by occasionally hosting officers from other agencies of CARICOM member States. The Commission, which has offered to assist other CARICOM member States that have not yet established a national agency, has reported a fruitful working relationship with the United States Federal Trade Commission, sharing information on specific cases.

46. According to its response to the UNCTAD questionnaire, the Brazilian competition authority CADE considers international cooperation to be a key ingredient of effective case investigation as a means of solving day-to-day problems in its prosecution work.

47. To promote informal cooperation, Brazil has engaged successfully with advanced competition authorities such as the United States Department of Justice and the Directorate-General for Competition of the European Commission. An example of such joint efforts are the simultaneous dawn raids in the hermetic compressors for refrigeration case (2009). Examples of other cases of international mergers that involved cooperation with other competition authorities and coordination of remedies are available in competition enforcement circles.[16]

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[15] Spanish-language forum for all competition agencies in the Americas, which operates through monthly conference telephone calls to share experiences.

[16] In the Munksjö and Ahlstrom merger case, a waiver of confidentiality model was developed to grant both parties full access to relevant information. Before granting the waivers, the authorities discussed previous cases, market conditions and methodology used to study specific markets. After the waivers were granted, concerns about the merger were shared, as well as market findings and information

48. Benchmarking studies were carried out with the assistance of sister agencies such as the United States Department of Justice, FAS and the Directorate-General for Competition in the following sectors in Brazil: the airline industry, shopping centres and pharmaceuticals.

49. From 2010 to 2011, Brazil and Chile cooperated informally in a merger application in the air transport sector. Chile benefited from cooperation regarding the definition of the relevant market as well as remedies aimed at rationalizing the new market structure resulting from the merger.

50. Chile prosecuted an international cartel involving the leading companies in the hermetic compressors market (Whirlpool S.A. and Tecumseh do Brasil Ltda) for having engaged in price-fixing agreements. Informal cooperation proved to be effective in dealing with jurisdictional issues related to the products manufactured in Brazil and imported to Chile, and vice versa. Finally, the notification to companies outside Chile was made through a judicial mechanism between countries known as international exhort, for which Chile received the assistance of the Brazilian judicial authorities. In this case, Chile avoided the international exhort, which is a lengthy process that could have undermined the short administrative timelines provided in its competition law.[17]

51. In the review of the aforementioned cases of informal cooperation, it can be concluded that different types of information were indeed exchanged between the authorities in different regions of the world. Clearly, this type of informal cooperation has contributed to solving specific case problems faced during investigations. The problems were related to the following points:

(a) Definition of the relevant markets;

(b) Economic and legal analysis applied to the identification of risks or the proof of an illegal offence;

(c) How the remedies were applied.

52. The above review also indicates that informal cooperation is an effective and necessary tool for enforcing competition law at the national, regional and international levels. It allows competition agencies to make better use of scarce resources and adopt remedies that can restore competition with minimum burden on business.

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given by the party. Cooperation was critical, since assets were in Europe, and both authorities had access to more and better information, such as the number of competitors and clients. When designing the remedies, the communication focused on coherence in both countries, addressing competition concerns raised by both authorities.

[17] In a recent merger case, the Nestlé and Pfizer merger, Chile evaluated the implications of the international merger of these multinational companies and established that the transaction would have produced a significant concentration in the Chilean nutritional market, especially in the baby dairy products market. The competition authority of Chile held a number of meetings with foreign authorities, mainly in Latin America, to identify the relevant market, the economic analysis applied in each country and the measures implemented to mitigate the problem. Informal cooperation with the Mexican competition authority facilitated significantly the analysis of the Chilean case. The importance of the exchange of case information was critical because the Pfizer factory was located in Mexico, and the sale of this asset was of particular relevance to the remedies proposed in Chile.

III. Informal cooperation: What works?

A. Usefulness

53. The replies to the UNCTAD questionnaire reaffirms that it is of paramount importance for young competition agencies to foster both types of informal cooperation: general and case-specific informal cooperation. In this regard, it is worth mentioning the usefulness of informal cooperation as a core day-to-day activity of any competition agency. For example, the response of the United States Department of Justice and the United States Federal Trade Commission to the questionnaire states the following:

> (…) Enforcement cooperation is a key means both of improving the effectiveness of individual agency investigations and producing consistent outcomes in similar circumstances, and informal cooperation has developed into an important tool for achieving those goals. With over 120 competition agencies around the world and with many transactions subject to concurrent or sequential review by multiple agencies, there is a serious risk that reviews will lead to inconsistent results that are not justified by differences in market conditions, or that different approaches will lead to a situation in which the most restrictive jurisdiction effectively sets the rules for all jurisdictions. Informal cooperation is an extremely useful tool for working together, at the practical level in helping agencies to resolve individual cases effectively and efficiently to avoid these risks. Informal cooperation also provides us and our counterparts with a better understanding of one another's policies and practices, which has helped to promote convergence around consensus best practices.

B. Challenges

54. To achieve the full potential of informal cooperation on particular case-specific cooperation, young competition agencies need to tackle a number of challenges:

(a) Lack of resources to participate in subregional, regional and international conferences, meetings and training workshops;[18]

(b) Lack of interaction and trust between young enforcers and more mature ones that leads to see a small group of agencies regularly cooperating with each other: "Lack of prior interaction between agencies and lack of trust, for example, affect the willingness of enforcers to co-operate with each other, and limit effective co-operative relationships to a small group of agencies which regularly engage in cooperation" (OECD, 2013).

(c) Many young competition agencies have limited capacity to absorb the general informal cooperation activities that other relatively advanced competition agencies can provide them;

(d) What constitutes confidential information in case-specific informal cooperation settings and what does not?

(e) Timing issues. In merger cases, some firms choose to notify and obtain resolutions from certain jurisdiction before notifying other jurisdictions. This, and differentiated review timing can affect agencies' ability to cooperate effectively. The latter

[18] To some extent, international assistance from development partners and advanced competition authorities has contributed to solve this problem. UNCTAD research points out that resource and capacity constraints are perhaps among the most significant problems facing competition authorities in developing economies. Political will and support to national competition authorities are also factors. See UNCTAD (2011b).

can be even more difficult when there is a difference in procedural rules, such as deadlines in each country, sometimes resulting in issues relating to time coordination in cases involving non-cooperation by the parties concerned. In such instances, each country has to gather various documents to secure the legal procedure and time frame, which can be a serious constraint to informal cooperation.

C. New generation of informal cooperation among young agencies

55. Many young agencies responding to the questionnaire indicated that they had devoted their scarce resources to strengthen informal cooperation with other agencies, particularly with those of neighboring countries. In this context, informal cooperation is considered to augment resources and enhance effective enforcement of competition laws.

56. Given that the thirteenth session of the Intergovernmental Group of Experts on Competition Law and Policy decided to include in its work "informal international cooperation that could lead to, and be done in parallel with, formal cooperation",[19] the UNCTAD secretariat has actively promoted and supported informal cooperation initiatives among competition authorities in ways that address the day-to-day concerns of young competition authorities (UNCTAD, 2014).

57. As a response to challenges posed by cross-border anticompetitive practices, it was proposed during the thirteenth session of the Intergovernmental Group of Experts that enforcement capabilities be aggregated. One way to achieve this could be through the creation of a focused multinational information-sharing platform. Key features of the platform could include the pooling of resources to create a visible flow of non-confidential information and enhance enforcement.

58. Under this platform, which was designed by UNCTAD in 2013, each jurisdiction would log information, for example on past and ongoing cartel and merger investigations, and market studies. Such a platform would enable information gathering and sharing and would facilitate collaboration in ongoing investigations. The benefits of the platform would include reduced enforcement fragmentation, enhanced agency effectiveness and deterrence. The databank would also contribute to capacity-building, learning and informal ad hoc cooperation.

59. In July 2013, the UNCTAD secretariat launched the *Database on Competition Cases* during a COMPAL meeting in Lima, Peru. It has been praised by various regional groupings and member States, notably Colombia, Chile and Peru (see box below), WAEMU and CIS countries, who intend to use it.

60. The recently adopted Lima Declaration (see box) is a new generation of informal cooperation among young agencies that will deepen their collaboration and knowledge of each other's laws, practices and cases.

[19] The twelfth session of the Intergovernmental Group of Expert, held in July 2012, examined the current features of international cartels and cross-border merger control in developing countries and countries with economies in transition. The challenges faced by these countries in competition law enforcement in these areas were also examined, while areas for cooperation were suggested. During the round table entitled "Cross-border anticompetitive practices: The challenges for developing countries and economies in transition", the director of the University of Oxford Centre for Competition Law and Policy described factors pertaining to international competition law enforcement and touched upon the enforcement realities in developing countries and countries with economies in transition.

The Lima Declaration: Informal cooperation among neighbors – Colombia, Chile and Peru

In connection with the thirteenth session of the Intergovernmental Group of Experts on Competition Law and Policy, the heads of the competition authorities of Colombia, Chile and Peru in July 2013 discussed ways in which an informal platform for the exchange of experiences could be developed, taking into account day-to-day constraints and the need for competition agencies to view this type of cooperation as a necessity rather than a burden.

After several rounds of negotiations, the heads of the three competition authorities and UNCTAD signed the Lima Declaration during the OECD Latin American Competition Forum in September 2013. The main provisions of this instrument of informal cooperation are as follows:

(a) Creation of a platform for the exchange of experiences and training among the competition agencies of Chile, Colombia and Peru. Specific aims are as follows:

(i) To share experiences gained from enforcing their respective laws;

(ii) To conduct studies and research on topics of interest for all of the agencies;

(iii) To take steps to improve the level of integration of the agencies by means of periodic informal meetings, taking into consideration the timing of international and regional forums;

(b) Since the signing of the Lima Declaration, the three competition authorities and UNCTAD have met regularly to exchange views and strategies on the enforcement of competition law in cases of mutual interest and identify potential cross-border enforcement actions. This new cooperation arrangement complements and builds on the existing bilateral formal agreements for cooperation between the Peruvian competition authority (INDECOPI) and the National Economic Prosecutor's Office of Chile. A similar channel of communication exists between Mexico and Peru for the exchange of general information on a procedure involving both countries.

Source: http://www.programacompal.org/declaracion-lima-2013.html.

61. Another way of encouraging young competition agencies to engage in more informal cooperation is by sharing knowledge and expertise on how to manage their respective administrative procedures to improve efficiency and allow access to tools applied by other competition agencies in the investigation of cases.

62. Young competition agencies can move from general informal cooperation to a more sophisticated case-specific one by exchanging case intelligence between them as they develop experience and expertise. Indeed, one of the recommendations of the Intergovernmental Group of Experts aimed at enhancing informal cooperation between young competition authorities and those in developed countries was the establishment of an international intelligence network built on the trust and knowledge of peer-competition authorities (UNCTAD, 2012). In the long run, as young agencies build expertise and capabilities, they will attract more leniency applications from cartelists. In this connection, capacity-building programmes help younger competition authorities scale up anti-cartel enforcement in handling cases (UNCTAD, 2012).

IV. The future of informal cooperation

63. International cooperation on competition issues has been on the agenda of UNCTAD and other international organizations for several decades. With the increasing globalization of economic activities comes the daunting task of dealing with cross-border mergers and

anticompetitive practices, including international cartels. The cross-border aspect of competition law enforcement remains a challenge, especially to young competition agencies, which often face financial and human resource constraints. These challenges clearly underscore the need for collaborative enforcement between competition agencies to ensure that anticompetitive practices do not cancel out the benefits of well-functioning markets.

64. During the thirteenth session of the Intergovernmental Group of Experts meeting, a number of best practices to strengthen informal cooperation among competition agencies were suggested, based on the experiences of member countries and institutions. Of these, it is important to emphasize the following:

(a) Promoting better understanding of each other's laws, assessment criteria and design of remedies and sanctions so as to promote transparency in procedures, processes and design. An example of this best practice is being implemented through the signatories of the Lima Declaration, which could lead to the development of appropriate solutions to legal limitations, particularly by young competition agencies;

(b) Building human and technical capacities of young competition agencies to enforce competition law by:

(i) Developing capacity-building programmes such as the COMPAL Global Programme of UNCTAD, as well as other initiatives such as the establishment of regional training centres in Mexico, Hungary and the Republic of Korea; and information-sharing networks such as the African Competition Forum and the activities of other regional integration groupings;[20]

(ii) Exchanging staff and/or detaching resident advisers to promote mutual understanding and trust;

(c) Developing guidelines and best practices for cooperation agreements based on what works and what does not;

(d) Ensuring the inclusion of provisions in national laws allowing for cooperation and exchange of information for enforcement purposes;

(e) Establishing and implementing clear safeguards for due process and the protection of confidential information.

[20] COMESA, SADC, ASEAN Working Group on Competition, CARICOM, WAEMU, CIS and the Euro-Asia Platform.

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Review of capacity-building and technical assistance in competition law and policy

Note by the UNCTAD secretariat

Executive summary

This annual report reviews the capacity-building and technical cooperation activities of the UNCTAD secretariat as well as those of other development partners during the period 2012–2013. The report contains information provided by member States on technical cooperation activities provided or received, bilaterally or regionally, in the area of competition law and consumer policies.

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Introduction

1. Competition and consumer protection can play a direct and important role in promoting economic growth and reducing poverty. Competition stimulates innovation, productivity and competitiveness, contributing to an effective business environment. This generates economic growth and employment. It creates possibilities for small and medium-sized enterprises, removes barriers that protect entrenched elites and reduces opportunities for corruption. Competition, therefore, increases a country's attractiveness as a business location, triggering national and foreign investments. Competition also delivers benefits for consumers through lower prices, improved services and greater choice. In this sense, competition generates total consumer welfare. Consumer protection benefits all consumers by ensuring that they have the right of access to non-hazardous products; to adequate information to enable them to make informed choices according to individual wishes and needs; and to effective redress. Empowered consumers, who know their rights and enforce them, are subject to fewer abuses. This directly improves their welfare. It also contributes to creating a level playing field for businesses which have to apply a common set of standards, supporting competition.

2. The United Nations Set of Principles and Rules on Competition directed UNCTAD to provide technical assistance and advisory and training programmes on competition and consumer policies to interested developing countries and economies in transition.

3. UNCTAD capacity-building and technical assistance includes the following:

- Formulating new or strengthening existing competition legislation that fits their specific legal and economic structure and can best address their development needs;
- Establishing new or strengthening existing competition institutions;
- Capacity-building for better enforcement of competition law;
- Promoting a competition culture through competition advocacy activities;
- Conducting voluntary peer reviews of competition law and policy.

4. To achieve these objectives, UNCTAD works closely with competition authorities in member States, development partners, the Organization for Economic Cooperation and Development (OECD), the International Competition Network (ICN) and competition experts from the private sector and academia. This annual report contains information on the capacity-building and technical cooperation activities of the UNCTAD secretariat for the period 2012–2013, as well as information provided by member States and international organizations to UNCTAD on technical cooperation activities in the field of competition law and policy.

5. The report is articulated in four sections: following the introduction, section I focuses on capacity-building provided by UNCTAD at national and regional levels during the period 2012–2013; section II is devoted to capacity-building reported by member States and other international organizations; section III deals with capacity-building and technical assistance reported by recipient countries; section IV summarizes some of the lessons and best practices identified by donor agencies and institutions.

I. UNCTAD's capacity-building activities

A. Activities extended to individual countries

6. In 2012–2013, UNCTAD continued its demand-driven efforts to assist in the creation of a competition culture in developing countries. To that end, UNCTAD provided technical assistance related to the preparation, adoption, revision or implementation of national competition and consumer protection policies and legislation, as well as in areas contributing to a better understanding of the issues involved, and building national institutional capacity to enforce effective competition legislation. UNCTAD also assisted Governments in identifying the role of competition policy in development, its implication at national, regional and international levels, as well as strategies for regional and subregional cooperation in this field. The main areas of UNCTAD's technical assistance for the period are described in the following paragraphs.

1. Assistance in the preparation of national competition laws

7. Within the framework of the efforts to help countries draft and/or review their competition legislation, UNCTAD assisted the Governments of Brunei Darussalam, Paraguay, Guatemala and Comoros in the drafting of their competition law and assisted Seychelles, Zimbabwe and Serbia in revising their law. The competition laws of Comoros and Paraguay were adopted in 2013.

2. Competition advocacy

8. UNCTAD's various advisory and training activities were combined with other events or provided through seminars, workshops, other meetings and activities and were directed at stakeholders, specific officials or wider audiences including Government officials and academics, as well as business- and consumer-oriented circles. The regional workshop on competition law enforcement in the Gulf region was held in Doha on 16–18 April 2012 as an UNCTAD XIII pre-conference event to discuss challenges and future perspectives for competition law and policy implementation in that region. The workshop was organized in cooperation and with the support of the Ministry of Business and Trade of Qatar. The meeting discussed the role of competition law and policy for economic development and consumer protection, basic concepts of competition law, and development challenges faced by the Gulf countries in competition law enforcement. UNCTAD organized a workshop on competition law enforcement against State-owned enterprises in India, jointly with the Competition Commission of India (21–22 May 2012) as well as a workshop in Moroni (17–18 October 2012) to raise awareness about the adoption of a competition law by the Comoros Government.

3. Training of case handlers

9. Within the framework of training activities for competition case handlers, several training workshops were organized in 2012–2013. Under the national component of the COMPAL programme, UNCTAD secretariat provided recommendations to the competition bills of the Plurinational State of Bolivia, El Salvador, Guatemala, Honduras, Nicaragua and Peru for their subsequent enactment, and included field missions to Guatemala (October 2012), Peru (March 2012) and El Salvador (May 2012) for dissemination purposes. Also in 2012, UNCTAD produced a guide on competitive public procurement for Ecuador, and a strategic plan for the competition agency of Honduras for the period of 2013–2019. In November 2012, the compilation of legislation, doctrine and jurisprudence on competition and consumer protection was accomplished in Colombia. The database is already being used by officials at the Superintendencia de Industria y Comercio (SIC) to

better substantiate their cases, and hence enhance the quality of the Agency's decisions. More than 1,100 documents were analysed and digitalized and more than 1,500 doctrine files were drafted and included in the database showing links to the relevant pieces of legislation. The Agency is committed to proceed with the activity with its own resources. Following the finalization of the Cartel Detection and Investigation Manual, a workshop was organized by UNCTAD in September 2012 in Indonesia for the staff of the Indonesian Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha – KPPU) to disseminate the Manual and to enhance the understanding of the Commission's case handlers on how to apply the detection and investigative techniques and tools described in the Manual to real cartel cases. UNCTAD also organized training courses on investigative techniques in the following countries: Seychelles (March 2012), Zambia (July 2012), the United Republic of Tanzania and Zimbabwe (November 2012) and Mongolia (December 2012). A training workshop on anti-competitive practices and competition law enforcement was organized back to back with the peer review dissemination event on 7 December 2012 in Ulaanbaatar for the staff of the Mongolian Agency for Fair Competition and Consumer Protection, with the participation of resource personnel from other competition authorities. The topics of the workshop were selected in consultation with the Agency based on the needs of the staff.

4. Institution-building

10. UNCTAD support to countries that have adopted national legislation, as well as newly established competition agencies, includes activities in support of institution-building. Accordingly, in Costa Rica UNCTAD provided counsel and support on the design and launching of the competition agency's website, which was presented to the public in April 2012. UNCTAD also organized in Ecuador a conference on competition issues, which was delivered in March 2012 in the Universidad de las Américas, followed by a workshop directed to trade associations to raise competition awareness. In addition, UNCTAD and the competition agency of Honduras met with representatives of the public sector (members of parliament, the executive, sector regulators, judges, and the consumer protection agency) in May 2012 to encourage competition culture and raise awareness on competition issues. On that occasion UNCTAD signed a memorandum of understanding with Honduras, by which the latter acceded to UNCTAD's COMPAL programme. This agreement was presented in the round table co-organized by UNCTAD and Honduras, entitled "State interventionism and competition policy", and in the subsequent dissemination event "The importance of competition for businesses, consumers and national development". In addition, UNCTAD and the Government of Bulgaria launched on 21 November 2012 the Sofia Competition Forum. This is a regional initiative which strives to foster cooperation and the development of regional ties in the Balkan region towards ensuring a uniform application of competition rules. The initiative aims to assist countries in the region in adopting and enforcing competition law and to maximize the benefits for these countries of well-functioning markets. The creation and improvement of competition legislation, capacity-building, application of best practices in law enforcement, and finding common solutions to the specific competition concerns in the region are key objectives of the Sofia Competition Forum.

Box 1. The Sofia Competition Forum

In November 2012 the Sofia Competition Forum was established as a joint initiative of UNCTAD and the Bulgarian Commission on Protection of Competition. The Forum aims to provide institution- and capacity-building to young competition authorities of the Western Balkans (Albania, Bosnia and Herzegovina, Croatia, Kosovo (United Nations Administrative Region, Security Council resolution 1244 (1999)), Montenegro, the former Yugoslav Republic of Macedonia, and Serbia). The initiative provides a forum for cooperation through seminars and a web-based platform for exchange of information. Through maintaining a web-based platform for the publication of information, materials and presentations, as well as for conducting webinars, the Forum expects to further facilitate cooperation between competition authorities in the region and foster the development of regional relations among them. Since its establishment, second and third Forums were held in Sofia in May and November 2013, respectively.

5. Consumer protection

11. In respect of consumer protection matters, capacity-building and training activities were implemented at the international and country levels. At the international level, the second International Consumer Protection Forum was organized jointly by UNCTAD and the Peruvian consumer protection agency on 11 and 12 November 2012 in Lima. The Forum gathered consumer protection agencies from the Americas as well as regional organizations (the Organization of American States), civil society organizations, and academia. Issues were discussed regarding (a) revision of the United Nations Guidelines for Consumer Protection; (b) educational programmes for young consumers; (c) e-commerce; (d) implementation of recall systems; (e) consumer protection in tourism. The third International Consumer Protection Forum will be held in Santo Domingo on 24 and 25 May 2013. At the country level, Nicaragua, El Salvador, and Saint Lucia provided their respective consumer protection bills for UNCTAD's technical review. The Advisory Group of Experts and UNCTAD provided comments for the aforementioned bills and supported the dissemination process in these three countries. In the Dominican Republic, UNCTAD participated in a two-day seminar in August 2012 with consumer associations organized by the Dominican Consumer Protection Agency. It provided counsel on how to best integrate the needs and demands of consumer organizations with those of businesses. In the Plurinational State of Bolivia, UNCTAD drafted the content of a sustainable consumption education programme which was later implemented in secondary schools and universities. This entailed setting up an interactive web page and several training sessions in educational centres. The highlight of this activity consisted of an e-organization of a competition among students, prizes being awarded for the three best projects. The award ceremony took place in December 2012. In Colombia, UNCTAD commissioned a viability report to launch a Consumer Quality Seal (Señor Consumidor) among Colombian retail businesses in November 2012. The objective is to promote a self-sustaining consumer protection culture in the private sector – not only in the capital, Bogotá, but throughout the national territory. In Costa Rica, a new Automatic Market Monitoring System was launched by UNCTAD in March 2012. This system provides consumers with real-time information on market prices and is able to produce statistical data and reports automatically. Additionally, UNCTAD supported the organization of a workshop on international consumer protection and enforcement network best practices in San José, training all staff of the consumer protection agency on enforcement issues. UNCTAD organized a two-day seminar on case handling and on safe products to disseminate the procedures used by the consumer protection agency to all relevant stakeholders (other governmental agencies, academia, businesses, lawyers, and media). In El Salvador, UNCTAD supported the strengthening of consumer

associations by organizing training activities and exchange programmes throughout 2012. This included legal counselling on the steps to becoming a formal consumer association.

12. In 2013, UNCTAD held a briefing for the diplomatic missions in Geneva on the United Nations Guidelines for Consumer Protection, as part of the preparatory process for the seventh United Nations Review Conference to be held in 2015. The briefing, held on 29 October, was attended by regional coordinators and by representatives of more than thirty permanent missions in Geneva, and was an opportunity to discuss the consultations on the United Nations Guidelines for Consumer Protection.

13. The UNCTAD secretariat clarified that these consultations will not involve negotiations about the pertinence of revising the United Nations Guidelines for Consumer Protection or its text, but rather will consist of transparent and inclusive preparatory work to be submitted for the consideration of the Review Conference in 2015. A related report will summarize best practices in each field, and may propose a draft resolution on actions to be taken. Each working group will meet principally online. UNCTAD will conduct further consultations at international and regional forums on consumer protection throughout 2014 and 2015. In due course, member States will be asked to designate the person(s) to take part in the working groups.

6. Peer review and follow-up

14. With a view to ensuring coherence between overall governmental approaches to privatization and liberalization of trade and investment regimes, UNCTAD has initiated the organization of voluntary peer reviews on competition law and policy which has become a core activity of UNCTAD's work on competition policy. These peer reviews provide an ideal forum to discuss market-based policy approaches that can promote development and ensure that markets work for the poor.

15. The peer reviews have become an appreciated part of UNCTAD work on technical assistance. They gave rise to a range of recommendations on how the application of the legislation might be made more effective at regional and national levels and how, through UNCTAD, to build capacity for the enforcement and advocacy of competition policy. In this regard, in 2012, as a follow-up of the tripartite peer review of the United Republic of Tanzania, Zambia and Zimbabwe, the UNCTAD Competition and Consumer Policies Branch organized a training of judges and commissioners from 23–27 September in Gaborone, Botswana. The workshop for judges falls within UNCTAD's framework of institutional capacity-building for effective competition law and policy enforcement. Training of judges at the regional level is one of the recommendations of the *Voluntary Peer Review of Competition Law and Policy: A Tripartite Report on the United Republic of Tanzania–Zambia–Zimbabwe*. The tripartite peer review session took place during the twelfth session of the Intergovernmental Group of Experts on Competition Law and Policy (IGE) held in Geneva in July 2012. In many countries, members of the legal profession and the bench may not have had an opportunity of handling competition cases. In addition, the enforcement of competition law in the context of globalization and changing markets demands greater sophistication and upgrading of skills for judges to effectively adjudicate competition cases. UNCTAD presented the results of the peer review of Nicaragua at the American University of Managua on 22 October 2013, and made a proposal for a technical assistance project to implement the peer review's recommendations.

16. To assess the value and impact of UNCTAD peer reviews, UNCTAD has commissioned an external audit to carry out an ex post evaluation of the reviews, the implementation of the recommendations and their impacts. The report will be presented in 2015 during the seventh United Nations Review Conference.

B. Regional and subregional activities

17. UNCTAD technical cooperation and capacity-building activities were increasingly provided within the framework of regional and subregional groupings.

1. COMPAL

18. Under COMPAL[1] a number of capacity- and institution-building as well as training and information-sharing events were provided to beneficiary countries.

Activities in 2012

19. The Advisory Group of Experts and UNCTAD provided recommendations on the competition bills of the Plurinational State of Bolivia, El Salvador, Guatemala, Honduras, Nicaragua and Peru for their subsequent enactment. It included field missions to Guatemala (October 2012), Peru (March 2012) and El Salvador (May 2012) for dissemination purposes. Also in 2012, UNCTAD assisted in the production of a Guide on Competitive Public Procurement for Ecuador, and a Strategic Plan for Competition Agency of Honduras for the period of 2013–2019.

20. In Colombia, a compilation into a database of legislation, doctrine and jurisprudence on competition and consumer protection was accomplished by November 2012. The database is already being used by officials at the SIC to better substantiate their cases, and hence enhance the quality of the agency's decisions. In Costa Rica, UNCTAD provided counsel and support on the design and launching of the competition agency's website, which was presented to the public in April 2012. In Ecuador, a conference on competition issues was delivered in March 2012 at the Universidad de las Américas, followed by a workshop directed at trade associations to raise competition awareness. In El Salvador, an advanced training for staff of the competition agency was organized in October 2012 on specific enforcement issues, such as abuse of collective dominance, predatory pricing and parallel practices. In Honduras, UNCTAD and the competition agency met with representatives of the public sector (members of parliament, the executive, sector regulators, judges and the consumer protection agency) in May 2012 to discuss advocacy of the competition culture and to raise awareness on competition issues. On that occasion, UNCTAD signed a memorandum of understanding with Honduras enabling the latter to accede to COMPAL. This agreement was presented during the round table, entitled "State interventionism and competition policy", co-organized by UNCTAD and Honduras, and also in the subsequent dissemination event entitled "The importance of competition for businesses, consumers and national development". In Nicaragua, UNCTAD conducted a conference to disseminate the findings of the peer reviews held in Geneva in 2013 and organized training courses on merger case law and analysis for the staff of the Nicaraguan Competition Agency. Two other training sessions on competition issues were organized, one for judges in general (May 2012) and another one for supreme court judges (October 2012). In Peru, a training course was organized for Peruvian regional offices on competition and consumer protection issues (November 2012). The activity is ongoing since 2009, integrating a long series of workshops and internships. National and international experts deliver the training courses, which are aimed at providing a decentralized competition and consumer protection enforcement throughout the country.

[1] Information on COMPAL can be found at http://unctad.org/en/Pages/DITC/CompetitionLaw/Competition-and-Consumer-Protection-Policies-for-Latin-America-%28COMPAL%29.aspx (accessed 14 April 2014).

21. Four manuals on common methodologies for economic analysis of country cases with the aim of facilitating the prosecution of cross-border anticompetitive practices were prepared under COMPAL. The first two manuals focused on Colombia and Peru. Following this, two training workshops were organized in these two countries for the staff of the competition agencies. Given the success of the experience, a workshop for Central American countries was held in November 2011, and after that, two more manuals were commissioned and produced in 2012 focusing on Central America. In December 2012, two final workshops for Colombia and Peru were organized with a COMPAL consultant and the staff of the agencies working closely in the application of all that had been learnt from real and hypothetical cases. Two regional trainings on competition issues for Colombian and Peruvian judges were delivered in December 2012. Another training session was organized on economic analysis of competition cases as part of a regional activity. The COMPAL Annual Conference took place in Lima from 20–22 June 2012. It discussed the country reports on activities undertaken in 2011 and 2012, and activities planned for 2012–2013, the regional component of COMPAL and substantive sessions on knowledge and human resources management, and country experiences with merger control.

Box 2. COMPAL activities implemented in 2013

Colombia

– Competition law training programme with Oxford University (in cooperation with Peru) 18–20 April;

– Organization of a study tour in Oxford, 18–30 October;

– Training for judges in cooperation with El Salvador and Nicaragua;

– Two training workshops for judges in June and December (in coordination with Peru).

Costa Rica

– Workshop on alternative dispute resolution and e-commerce;

– Training of the agency's human resources on consumer rights, 20–21 May.

Ecuador

Workshop on international bid rigging: The aim of the workshop was to provide lessons on how concurrent case law was taking place during the decade 2002–2012 for the liquid oxygen market in seven countries: Argentina, Brazil, Chile, Colombia, Mexico, Panama and Peru, 12–13 March.

El Salvador

– Training of judges in cooperation with Costa Rica and Nicaragua, 4–5 November;

– Training workshop on bid rigging addressed to members of the Public Procurement Offices in El Salvador, 10–15 March;

– Participation in the event to present the new consumer protection law amendments in March 2013.

Nicaragua

Training of judges, in cooperation with El Salvador and Costa Rica, 6–8 November.

Paraguay

Technical assistance to comment the proposed regulations for the new competition law which was prepared by the Inter-American Development Bank, 26–27 September.

Peru

– Competition law training programme with Oxford University, in cooperation with Colombia, 11–12 June;

– Two training workshops for judges in June and December 2013, in coordination with Colombia;

– Participation at the Latin American Competition Forum of the OECD in September – signature of the Lima Declaration, an informal cooperation agreement between Colombia, Chile and Peru.

Dominican Republic

International Consumer Protection Forum, 23–24 May.

2. The African Competition Programme

22. The Africa Competition Programme (AFRICOMP) aims at helping African countries develop appropriate administrative, institutional and legal structures for effective enforcement of competition and consumer law and policies. Since 2009, most of UNCTAD technical cooperation activities in Africa are undertaken within the framework of AFRICOMP. The programme provides for a more coordinated and streamlined approach in technical cooperation activities based on the needs of each beneficiary country while promoting regional cooperation. It emphasizes the beneficiary's ownership and is demand driven. The programme further seeks to establish closer links with the private sector, as well as with non-governmental organizations and local learning institutions. Under the umbrella of AFRICOMP, UNCTAD has assisted regional organizations in Africa in drafting and implementing competition legislations. It has also organized a number of conferences, seminars and workshops aimed at contributing to capacity-building and multilateral cooperation in the area of competition (see box 3).

Box 3. The African Competition Programme

Within the framework of AFRICOMP, country-specific capacity-building activities on competition policy and law were undertaken for Seychelles, the United Republic of Tanzania, Zambia, Zimbabwe and the West African Economic and Monetary Union (WAEMU). In Seychelles, training courses on competition law enforcement for the commissioners and case handlers of the Seychelles Fair Trading Commission were organized in March 2012. In the context of UNCTAD's support to WAEMU countries in reforming their competition framework, seminars aimed at garnering opinions from relevant stakeholders were held in Burkina Faso (5 October 2012), Senegal (9 October 2012), Niger (29–30 October 2012), Cote d'Ivoire (8–9 October), Togo (13–14 November), and Benin (15–16 November 2012). In addition, UNCTAD organized a regional competition forum in Ouagadougou (27–30 November 2012) on the relationship between competition authorities and sector regulators, and competition policy and public procurement within the WAEMU competition regime. In 2013, these activities were complemented with a two-week training course organized for their case handlers and the

representatives of their member States in cooperation with the Zurich School of Management and Law in Geneva from 1–12 July 2013, back to back with the thirteenth session of the IGE. In addition, two drafting sessions were organized in Geneva in cooperation with the Competition Directorate of the WAEMU Commission in September and November in Geneva. The aims of these sessions were to draft guidelines which would decentralize the enforcement power to member States, and thereby improve the enforcement of the community rules in WAEMU.

Four sector studies were published: "Competition issues in the economy of Mozambique" UNCTAD/DITC/CLP/2011/6; "Competition issues in the transport sector in Lesotho" UNCTAD/DITC/CLP/2011/4; "Competition issues in the tobacco industry of Malawi" UNCTAD/DITC/CLP/2011/5; "Competition issues in the petroleum industry in Zambia" UNCTAD/DITC/CLP/2011/1.

Box 4. The Latin American Economic System–UNCTAD Working Group on Trade and Competition

UNCTAD and the Latin American Economic System (SELA) secretariats formed the Working Group on Trade and Competition last October 2010 after having organized two regional meetings in Caracas (April 2009) and Brasilia (May 2010). The working group reflects the growing trend towards corporate concentration as a result of the internationalization of the world economy, which highlights the need for appropriate and effective mechanisms to preserve the conditions of free competition in markets, whether local or expanded, so that individuals can not unduly restrict or distort competition without risk of punishment. Furthermore, it has been stressed that technological advances increasingly encourage innovative ways to distort competition, for which authorities should often assess and update the rules, working methods and tools for implementation at the global, sectoral and regional levels, if it is the case. The sixth meeting will be held in the Dominican Republic in October 2014.

See: http://www.sela.org/view/index.asp?ms=258&pageMs=100539 (accessed 16 April 2014).

Box 5. The Euro-Mediterranean Competition Forum

In December 2011, a meeting was held in Vienna in the margins of the meeting on the Application of competition law in the Mediterranean countries, organized by the Austrian Competition Authority in cooperation with UNCTAD and the OECD, which addressed collaboration among neighbouring countries in the North and Middle East in competition matters. The idea was then presented in a meeting organized in the margins of the twelfth IGE in Geneva in July 2012, where the structure that the cooperation initiative could adopt was widely discussed. The debates resumed during a meeting held in Rabat on the 15 and 16 November 2012. The meeting consisted of three round tables on the needs of competition authorities in the region, organizational issues of the cooperation initiative, and the work programme for the following two years. The first Euro-Mediterranean Competition Forum workshop was organized on the margins of the thirteenth IGE in July 2013 and dealt with competition advocacy towards certain constituencies in the private and public sectors. The second workshop was held in Tunis in November 2013 and addressed the relationship between competition agencies and sector regulators. The next two meetings will be held on the margins of the ICN in Marrakech and in Malta, respectively, in September 2014.

II. Capacity-building provided by member States

Australia

23. During the period 2012–2013, the Australian Competition and Consumer Commission assisted/participated in:

- Cambodia in the drafting of its competition law;
- The second Association of Southeast Asian Nations (ASEAN)–Australia–New Zealand Free Trade Area (AANZFTA) ASEAN Experts Group on Competition (AEGC) capacity-building workshop, Sydney;
- Participation at the OECD–Republic of Korea competition training programme;
- AANZFTA ASEAN AEGC Capacity-building Workshop in Chiang Mai, Thailand;
- Delivery of a four-day investigation skills training course with Baker and McKenzie provided to the Vietnam Competition Authority in Hanoi;
- A fact-finding mission in the Philippines as part of an UNCTAD peer review of competition policy in that country;
- A four-month secondment to the Malaysia Competition Commission;
- A two-month secondment to the Vietnam Competition Authority;
- A two-month secondment of Vietnamese experts under AusAID's Australia Awards Fellowships.

European Union

24. The European Commission assisted China and India in 2012–2013. Competition weeks were organized in March 2012 in Beijing, October 2012 in Xian, March 2013 in Beijing and October 2013 in Kunming; European Union–China competition dialogues were held in June 2012 in Beijing and July 2013 in Brussels. The European Union also organized a merger workshop in Delhi, India.

Hungary

25. Activities in 2012:

- Twinning project for the Albanian Competition Authority (2011–2012);
- Keeping the OECD–Hungarian Competition Authority (GVH) Regional Centre for Competition in Budapest, Hungary in operation (since 2005);
- One-week consultation at the GVH for economists from the Armenian State Commission for Protection of Economic Competition.

26. Activities in 2013:

- Seminar organized for GVH staff by the OECD–GVH Regional Centre for Competition in Budapest, Hungary;
- Keeping the OECD–GVH Regional Centre for Competition in Budapest, Hungary in operation (since 2005).

India

27. During 2012–2013, India reported that its Competition Authority had conducted the following activities:

- Advised Malaysia Competition Commission on enforcement procedures and on guidelines in two key enforcement areas;
- Advised the Competition Commission of Singapore on merger procedural guidelines;
- Advised the Philippines Office of Competition on enforcement process and practices on merger;
- Short workshop on antitrust/merger issues in collaboration with the United States Federal Trade Commission (USFTC), 30 July–1 August 2013;
- Seminar on the Competition Commission of India by the American Chamber of Commerce at Mumbai, India, 14 February 2013;
- The workshop on cartel enforcement and technology and antitrust, in collaboration with the American Bar Association/International Bar Association, 14–15 February 2013;
- Cartel investigation in collaboration with the United States Department of Justice, 20 November 2013;
- Workshop on high technology and competition issues in collaboration with the USFTC, 17–19 December 2013.

Italia

28. Activities in 2012:

- Italy concluded twinning projects for Croatia, Albania and Algeria. The project consisted of seminars and conferences aimed at promoting competition culture;
- The Italian Competition Authority organized study tours for officials from China, the Russian Federation, Serbia, the former Yugoslav Republic of Macedonia, and Bosnia and Herzegovina.

29. Activities in 2013:

- Training of Consumer and Competition Officials and Awareness Campaign, funded by the European Social Fund in Malta; training sessions for the Malta Competition and Consumer Affairs Authority on: cartel investigation; abuse of dominant position; behaviour of undertakings in oligopolistic markets. The Italian Competition Authority is the project leader;
- Study visits at the Italian Competition Authority by the respective competition agencies from Serbia, the former Yugoslav Republic of Macedonia, and Bosnia and Herzegovina.

Russian Federation

30. The Federal Antimonopoly Service of Russia (FAS Russia) has provided technical assistance and capacity-building to young competition authorities of Kazakhstan, Kyrgyzstan, the Republic of Moldova and Mongolia within the ICN since 2009. Under this

programme, technical assistance was provided in the form of conference calls, meetings of the FAS Russia experts with representatives of competition authorities, and preparation of recommendations.

31. In 2012, the FAS Russia founded the Resource and Training Centre (hereinafter, the Training Centre FAS Russia) in Kazan, which is used to provide the Commonwealth of Independent States member States with professional and advanced training in the field of antimonopoly regulation and competition policy. The Training Centre FAS Russia hosts educational workshops and other events on key topics of competition law and enforcement.

32. The FAS Russia also provided experts and methodological assistance to the Competition Authority of Armenia on the preparation of documents on accession of Armenia to the Eurasian Economic Community and Common Economic Area.

Switzerland

33. Switzerland is the founding member of the COMPAL programme, and in this capacity extends a large part of its assistance to young competition authorities through COMPAL (see I.B.1 for further details).

Turkey

34. The Turkish Competition Authority has carried out the following activities:

- Conference on Needs Assessment of the Organization of Islamic Cooperation (OIC) Member States in the Field of Competition Law and Policy was held in Istanbul (Istanbul Conference), on December 2013. This conference was attended by more than 50 representatives from 32 States including OIC member States, observer States and by representatives from the Islamic Centre for Development of Trade, the Standing Committee for Economic and Commercial Cooperation of the OIC Coordination Office, the Islamic Development Bank, the Statistical, Economic and Social Research and Training Centre for Islamic Countries, and invited speakers. The Istanbul Conference aimed to address the needs of the OIC member States in the field of competition law and policy;
- Support provided for the preparation of the peer review report of Pakistan.

United States Federal Trade Commission[2]

35. The USFTC and the United States Department of Justice Antitrust Division provide competition technical assistance to countries undergoing transition to market economies and establishing new competition regimes (the USFTC also conducts a consumer protection assistance programme). The programme began in Central and Eastern Europe in the early 1990s and has expanded around the world. The USFTC has continued its robust programme of international competition and consumer protection technical assistance in the past year, conducting 38 missions in 19 countries including, among others, China, Colombia, Costa Rica, India, Morocco, the Russian Federation and South Africa. Originally funded by the United States Agency for International Development, the programme is now funded by the

[2] R Tritell and E Kraus, 2013, The Federal Trade Commission's International Antitrust Program, FTC, pp. 9–10.

USFTC and several other government sources including the United States Agency for International Development.

36. Many of USFTC's most successful programmes involve the placement of resident advisors with young competition agencies for several months. This allows their experts to provide on-the-job training in the context of the recipient agency's current cases. The advisor helps to develop the investigative and analytical skills of the agency staff and introduces staff to available tools to improve the agency's effectiveness in requesting and assessing remedies in the context of the country's laws, traditions, and economic circumstances. The resident advisor programme is particularly effective in allowing the advisor to work with a range of the recipient agency's staff. The USFTC has recently sent resident advisors to Colombia, South Africa, and Viet Nam. USFTC also conducts short-term programmes, in which experienced antitrust lawyers and economists provide training in investigational skills by using hypothetical cases to conduct simulated investigations involving issues that developing agencies typically encounter.

37. The "U.S. SAFE WEB Act", enacted in 2006 and recently renewed through 2020, enables the USFTC to host foreign competition and consumer protection agency officials and, in appropriate circumstances, provide them with access to non-public materials, enabling them to gain valuable experience by working with USFTC case teams. Pursuant to this authority, the Office of International Affairs established the International Fellows and Interns Program under which foreign officials spend up to six months at the USFTC learning how the USFTC's legal and economic staff conduct their work. When the Fellows return to their home agencies they can apply their experience in their work, share their learning with colleagues, and help to improve cross-border cooperation through the relationships they have developed. The USFTC has hosted 59 lawyers, economists and investigators from 28 jurisdictions, and will continue to expand the programme. USFTC attorneys and economists have also worked in the competition agencies of Canada, the European Union, Mexico and the United Kingdom of Great Britain and Northern Ireland as part of a staff exchange programme.

III. Capacity-building and technical assistance reported by recipient countries

Bosnia and Herzegovina

38. The Competition Agency of Bosnia and Herzegovina reported that staff attended seminars organized by the Regional Centre for Competition, the European Commission Technical Assistance and Information Exchange, the Sofia Competition Forum, ICN and OECD.

Colombia

39. Activities in 2012:

- Challenges of the protection of competition: Perspectives from 20 years of the Decree 2153 of 1992: This forum was supported by the European Union and took place in August. Lawyers, academics and representatives of international authorities participated in the event, during which topics such as the aims of antitrust law and its impact on associations were discussed;
- The ICN merger workshop – The role of economic evidence in merger analysis – Taking stock of the past and shaping the future: This workshop took place in

November; participants discussed about how economics can be used to understand specific issues of the market, how economics can help generating reliable evidence, and how economic data can be efficiently gathered. It was hosted under the auspice of ICN;

- Seminar workshop I: The role of the judicial power in the enforcement of competition law: This event was held in December and was addressed to the judicial and administrative authorities. Discussions dealt with an overview of the substantive and procedural aspects of the application of competition law. It was sponsored by COMPAL and UNCTAD (see section on COMPAL);
- During 2012, the process of becoming an OECD member was strengthened. The SIC began a "peer review" project during which its policies – including those related to competition – will be evaluated by other members of the international community.

40. Activities in 2013:

- Training workshop on bid rigging in public tenders: This workshop was held in February and its purpose was to teach assistants about bid rigging practices and why they are illegal. Some exercises were done to let people know how to detect bid rigging in public procurement processes through specific signs. The event was organized by the SIC together with the OECD;
- Improvement proposal: In the new versions of this seminar/workshop, the challenge will be to offer programmes with interesting and stimulating topics to be discussed. The high profile of the panellists will also be a key element. The SIC has been planning content to meet these needs since the beginning of 2014;
- In October 2013, the results of the peer review were presented to the Competition Committee of the OECD in Paris. Currently, the SIC is waiting for recommendations related to the document delivered and the presentation made.

Malaysia

41. Malaysia reported that in the last two years they received technical assistance from the Japan Fair Trade Commission, the European Commission, Australia and the OECD. An official of the Malaysia Competition Commission was seconded to the Australian Competition and Consumer Commission, August–November 2013. In addition, a competition regulatory expert from the Australian Competition and Consumer Commission was seconded to the Malaysia Competition Commission, September–December 2013.

Pakistan

42. Pakistan assisted in the following activities:

- UNCTAD *Peer Review on Competition Law and Policy: Pakistan* was published, including the formulation of a three-year capacity-building programme launch in 2014.

Peru

43. Activities in 2012:

- Assistance to the Working Group of the Congress of the Republic of Peru, responsible for the formulation of the Project on the Law of Control of Concentrations or Control of Mergers, Lima, 7 March;
- Forum on control of concentrations or merger control, Lima, 5 March;
- Discussion on concentrations or mergers, Lima, 6 March;
- Second meeting of the Latin American Economic System–UNCTAD Working Group on Trade and Competition, Lima, 18–19 June;
- Third annual conference of COMPAL II, Lima, 20–22 June;
- Course: Law on competition policy to heads of regional offices, Lima, 14 December;
- Training course on competition policy for officials of the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), Lima, 14 December;
- Workshop on collusive agreements and abuse of market dominance, to officials of INDECOPI, Lima, 14 December;
- Seminar/workshop on the role of the judiciary in the implementation of competition law, Lima, 12–14 December.

44. Activities in 2013:

- Workshop on mechanisms on cartel investigation – workshop on macro-regional capacity-building for regional offices, INDECOPI, Chiclayo, Peru, 18–19 February;
- Workshop on mechanisms on cartel investigation – workshop on macro-regional capacity-building for regional offices, INDECOPI, Arequipa, Peru, 20–21 February;
- Workshop on competition issues, Lima, 14 June;
- Second seminar/workshop on the role of the judiciary in the implementation of competition law, Lima, Peru, 13–14 June;
- Third seminar/workshop on the role of the judiciary in the implementation of competition law, Lima, 9–10 December.

Philippines

45. Per issuance of Executive Order No. 45, series of 2011, the Department of Justice, Office for Competition (DOJ–OFC) has been designated the Philippines Competition Authority. The Authority now acts as co-chair of the DOJ-OFC Working Group on Advocacy and Partnership.

46. In 2012, the Philippines Competition Authority experts were trained in an introductory course on competition law, case handling and investigative techniques and advanced training on competition law and policy. In 2013, the Philippines competition institutional and legal framework was set up. The work of the Authority was also devoted to the promotion of compliance programme and advocacy activities. The Philippines has

also volunteered to submit the review of its competition policy to the fourteenth session of UNCTAD's IGE that will take place in Geneva from 7 to 11 July 2014.

Republic of Moldova

47. The Competition Council of the Republic of Moldova benefited from technical assistance mainly from international bodies, the European Union and the World Bank, and also from the Interstate Council on Antimonopoly Policy, the Regional Centre for Competition in Budapest and from other competition authorities: FAS Russia, the Romanian Competition Council, among others.

48. For 2014, through the World Bank's development policy operation, the Competition Council of the Republic of Moldova will start to implement an electronic platform on the notification of state aid. The platform will be a novelty within the Commonwealth of Independent States and the European Union. It will give the opportunity to every provider of state aid to notify the Competition Council online.

49. Activities in 2012:

- Adoption and publication of the Law No. 183 of 11 July 2012 on Competition and the Law No. 139 of 15 June 2012 on State Aid;
- The twinning project was very important for improving the legislation of the Republic of Moldova in the field of competition. Thanks to this project the best European and World practices were integrated into the aforementioned legislative acts.

50. Activities in 2013:

- Revision of the by-law on the sectorial state aids, more specifically the by-law on airports, involved consultation with a World Bank expert. The cooperation was very efficient.
- Experts from the Romanian Competition Council delivered several workshops on competition and state aid for the employees of the Competition Council of the Republic of Moldova.
- In 2012 and 2013 there was cooperation with FAS Russia. Employees of the Competition Council made several study visits to the Training Centre FAS Russia and experts from the Russian Federation delivered seminars and workshops in the Republic of Moldova.

Seychelles

51. Competition officials from Seychelles attended the Common Market for Eastern and Southern Africa workshops in March 2012. UNCTAD conducted a fact-finding mission in Seychelles for the preparation of the competion policy peer review. The preliminary report was presented to stakeholders in March 2013 for comments.

IV. Assistance provided by other international organizations

A. Capacity-building by the Organization for Economic Cooperation and Development

52. Capacity-building and technical assistance activities of the OECD during 2012–2013 were not reported to UNCTAD. Details of these activities can be found on the website of the Organization.[3]

B. Capacity-building by the International Competition Network

53. The ICN's technical assistance activities for 2012–2013 were not reported to UNCTAD. They can be found on the Network's website.[4]

V. Impact of capacity-building

54. In a study prepared by the UNCTAD secretariat for the eleventh session of the IGE, it was indicated that the assessment of the impact of capacity-building is a difficult and complex task.[5] This exercise requires information and data that can be difficult to collect to conduct this type of exercise. Nevertheless, in the following lines we provide information on this issue as it was reported through our questionnaires by some member States. Lessons learnt from the experiences of these member States are also presented.

A. Information from member States

55. The Italian Competition Authority reported that its twinning project with the Croatian Competition Agency proved extremely fruitful. The technical assistance programme attained its objectives of enhancing the capacity of Croation Competition Authority staff to handle antitrust cases and strengthening their familiarity and awareness of competition enforcement techniques, in view of the imminent admission of Croatia to the European Union. Furthermore, the current training project in Malta allows for experience-sharing between the two competition agencies that will enable them to better frame and tackle competition issues and cases. The projects in Albania and Algeria, which successfully promoted competition culture, and the study visits at the Italian Competition Authority by several foreign agencies, increased the opportunities for mutual understanding and informal cooperation.

56. The main lesson learned from the experience of the Italian Competition Authority in technical assistance is that a successful programme implies flexible and active collaboration between the recipient and the provider, as well as a clear understanding of the needs of the recipient and the environment within which it operates.

57. The European Union indicated that technical assistance programmes are a useful tool in assisting the recipient countries in further developing their competition regimes. In order for these programmes to have the maximum beneficial effect it is important that they are demand driven, that is, that they address real needs identified by the recipient country.

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[3] See http://www.oecd.org/competition/ (accessed 24 April 2014).

[4] See http://www.internationalcompetitionnetwork.org/ (accessed 22 April 2014).

[5] See UNCTAD, 2011, Effectiveness of capacity-building and technical assistance extended to young competition agencies, Note by the UNCTAD secretariat, TD/B/C/CLP/11/Rev.1.

58. The Competition Authority of Peru reported that technical assistance provided by the COMPAL programme contributes to strengthening the technical capabilities of INDECOPI on competition and consumer protection. It also provides the opportunity for an exchange of experiences between similar institutions within members of COMPAL.

B. Lessons learnt from experience

59. In developing countries and economies in transition most competition agencies are in the early stage of enforcing their laws and they have to overcome many other challenges to create strong foundations that would allow them to fulfil their legal obligations effectively.[6] Some of these challenges are related to the functioning of the competition agency. Others are inherent to the environment within which the agency operates.

60. As regards the functioning of the competition agency, it was pointed out that transplantation of Western-style competition law into a developing economy would be a risky initiative.[7] Indeed, the challenges faced by these countries do not exist in those countries that had long experience with competition policy, namely, the meagre resources available for the new competition agencies, the limited indigenous expertise on competition law and policy, the lack of competition culture, limited expertise and resources of the judicial systems as well as limited access to business information.

61. The COMPAL Global programme draws heavily on lessons learnt during COMPAL I and II, identified by the project team and the independent evaluation of 2012. These include:

- The opportunity for a large, thematic global programme in competition and consumer protection: The previous phases of COMPAL had demonstrated that a large, long-term programme provided a level and continuity of support that delivered considerable change across Latin America. There is, therefore, a significant opportunity for replicating and scaling up this approach in other regions.
- The importance of regional leaders: The competition agencies of Colombia and Peru played a key role in supporting and mentoring staff from countries with weaker agencies and in generating momentum for COMPAL activities in the region. This has influenced the selection of partner countries for COMPAL Global.
- The need for UNCTAD to strengthen its technical capacity: To better meet the needs of the more advanced competition and consumer protection agencies, UNCTAD's Competition and Consumer Policies programme is currently recruiting senior staff at headquarters, and will appoint highly qualified resident advisers in the field.
- The importance of in-country counterparts with substantive knowledge: In previous COMPAL phases some project counterparts (national coordinators) were members of the Competition Agencies' International Relations Unit, without necessarily having a background in the substantive business of the agency. This has limited their capacity to contribute constructively to programme activities. In COMPAL Global, UNCTAD will seek counterparts with a comprehensive understanding of

[6] This issue is discussed in depth in UNCTAD, 2011, Foundations of an effective competition agency, Note by the UNCTAD secretariat, TD/B/C.I/CLP/8.

[7] W Kavacic, 1997, Getting started: Creating new competition policy institutions in transition economies, *Brooklyn Journal Of international Law*; 23:403–452; quoted in OECD, 2009, Challenges faced by young competition authorities, Note by the OECD secretariat, Global Forum on Competition, 19–20 February 2009.

competition and consumer protection issues who will be able to contribute effectively to the programme's activities.